D-1.

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
Title 13, Chapter 4

Amend: R13-4-101, R13-4-103, R13-4-104, R13-4-105, R13-4-106, R13-4-107, R13-4-108, R13-4-109, R13-4-109.01, R13-4-110, R13-4-111, R13-4-114, R13-4-116, R13-4-201, R13-4-202, R13-4-203, R13-4-204, R13-4-205, R13-4-206, R13-4-208

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 11, 2025

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD**
Title 13, Chapter 4

Amend: R13-4-101, R13-4-103, R13-4-104, R13-4-105, R13-4-106, R13-4-107, R13-4-108, R13-4-109, R13-4-109.01, R13-4-110, R13-4-111, R13-4-114, R13-4-116, R13-4-201, R13-4-202, R13-4-203, R13-4-204, R13-4-205, R13-4-206, R13-4-208

Summary:

This regular rulemaking from the Arizona Peace Officer Standards and Training Board (Board) seeks to amend twenty (20) rules in Title 13, Chapter 4, Articles 1 and 2 regarding the certification, training, and minimum requirements for peace officers and correctional officers. For Article 1, the Board indicates the proposed amendments will clarify definitions, increase employment opportunities, increase efficiency, and enhance training and safety of peace officer recruits. Specifically, the Board proposes the following changes to the rules in Article 1:

- Clarifies the difference between inactive certification and lapsed certification;
- Deletes the definition of illegal because the word is used in the rules consistent with its ordinary dictionary meaning;
- Clarifies that the comprehensive examination is no longer a final examination;
- Indicates all forms of marijuana are treated the same when evaluating an individual's use;
- Indicates all forms of dangerous drugs and narcotics are treated the same when evaluating an individual's use;

- Indicates all forms of steroids are treated the same when evaluating an individual's use;
- Reduces from two years to six months the look-back period for pre-employment marijuana use;
- Reduces from 10 years to five years the look-back period for matters considered juvenile indiscretion;
- Requires an individual seeking appointment to provide a copy of the individual's driver license;
- Increases the number of years for which information regarding previous employers, schools, and residences must be provided;
- Deletes the requirement that a pre-appointment medical examination be provided by a Board-trained physician;
- Deletes the requirement that a signed copy of the Code of Ethics be maintained in each individual's record;
- Adds an immersive training requirement to the full-authority peace officer basic training course;
- Clarifies that a peace officer whose certification status is not active may serve as a specialist instructor;
- Requires a student to make up all missed hours of training before graduating from the Board-approved full-authority peace officer basic training course;
- Requires the Board to conduct an on-site inspection to determine whether a basic training course is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use; and
- Adds active assailant response to the topics required in the Board-approved full-authority peace officer basic training course.

For Article 2 related to Correctional Officers, the Board is proposing the following amendments:

- Corrects the name of the Department;
- Deletes the juvenile indiscretion determination for admission to the academy;
- Deletes the requirement that an academy applicant provide personal references;
- Deletes reporting requirement;
- Deletes the requirement that specialized training for instructors be approved by the Board; and
- Deletes the requirement that lesson plans be annually reviewed.

1. <u>Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?</u>

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

2. <u>Do the rules establish a new fee or contain a fee increase?</u>

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

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

The Board indicates it did not review any study relevant to this rulemaking.

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

The Board believes the rulemaking will have minimal but important economic benefits, including enhancing public safety. The Board indicates deletion of burdensome administrative requirements is anticipated to have positive economic benefits, especially for physicians performing pre-appointment examinations and potential recruits. The Board states new requirements for students and academies, such as requiring a student to make up all missed hours of training and the incorporation of active assailant response and immersive training, will increase costs but address important public safety issues. Several amendments will increase employment opportunities for individuals who want to be peace officers.

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 Board believes the rules are neither intrusive nor costly. The Board states they are the minimum possible to foster public trust and confidence by establishing and maintaining standards of integrity, competence, and professionalism for Arizona peace officers and correctional officers.

6. What are the economic impacts on stakeholders?

Individuals seeking to participate in the Board-prescribed full-authority basic training course or training as a state correctional officer, law enforcement agencies seeking to employ peace officers, academies providing the Board-prescribed full-authority basic training course, and the Board and Department are persons directly affected by, bearing the costs of, and benefitting from this rulemaking.

The amended requirements will reduce the need for law enforcement agencies to petition the Board for approval of a waiver from the current provisions with respect to the look-back period regarding juvenile indiscretion and use of marijuana. Academies, as a result of this rulemaking, must include training regarding active assailant response and integrate demonstration of skill development through the use of scenarios; this will increase the time required to complete the Board-prescribed full-authority basic training course. The Board will have reduced costs from no longer having to train physicians to provide pre-appointment medical examinations. The Board will incur the cost of conducting on-site inspections to determine whether a basic training course is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use. Both the Board and Department benefit and will have reduced costs from deleting multiple unnecessary administrative requirements regarding the Department.

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

The Board indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on October 18, 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 Board indicates it received one written comment from Amy E. Lake, a Supervisor—Physician Practice (Case Management Team) with Banner Occupational Health. Ms. Lake expressed concern about the repeal of the requirement that pre-certification physical examinations be provided by a Board-trained physician. The Board responded that it believes requiring the Board to train physicians and to limit the opportunity to provide pre-certification physical examinations only to those trained by the Board is unnecessarily burdensome and inconsistent with the Board's responsibility to prescribe minimum qualifications for officers that relate to physical, mental, and moral fitness. Additionally, the Board states the rules contain a standard for the pre-certification physical examination. R13-4-107(B)(2)(b) indicates the physical examination is to be consistent with the standard of care for occupational medical examinations and R13-4-116(E)(1)(h) indicates that physical conditioning is a police proficiency skill taught as part of the basic training course.

A copy of the written comment is 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?

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 Board states certification of an individual as a peace officer or correctional officer is not a general permit as defined under A.R.S. § 41-1001. The Board indicates, under A.R.S. § 41-1822(A) and (B), the Board is required to prescribe reasonable minimum qualifications for peace officers and correctional officers. The Board established those qualifications at

R13-4-105, R13-4-109, and R13-4-202 and certifies only individuals who meet the prescribed qualifications. As such, the Board indicates the rules comply with A.R.S. § 41-1037(A)(3) in that "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements." Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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 directly applicable to the subject of these rules.

11. Conclusion

This regular rulemaking from the Board seeks to amend twenty (20) rules in Title 13, Chapter 4, Articles 1 and 2 regarding the certification, training, and minimum requirements for peace officers and correctional officers. The Board indicates the proposed amendments will clarify definitions, increase employment opportunities, increase efficiency, and enhance training and safety of peace officer recruits.

Pursuant to A.R.S. § 41-1823, a rule establishing a minimum qualification for law enforcement officers does not go into effect until six months after being filed with the Secretary of State.

Council staff recommends approval of this rulemaking.

Arizona Peace Officer Standards and Training Board

2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514

December 30, 2024

Ms. Jessica Klein, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 13. Public Safety
Chapter 4. Arizona Peace Officer Standards and Training Board

Dear Ms. Klein:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on November 21, 2024, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a 5YRR.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date not requested.

F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on any studies in its evaluation of or justification for the rules in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement;
   4. Public comment.

Sincerely,

Matt Giordano
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

PREAMBLE

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

(Date) (Editor's Note: Include a copy of the written approval from the governor.)

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R13-4-101	Amend
R13-4-103	Amend
R13-4-104	Amend
R13-4-105	Amend
R13-4-106	Amend
R13-4-107	Amend
R13-4-108	Amend
R13-4-109	Amend
R13-4-109.01	Amend
R13-4-110	Amend
R13-4-111	Amend
R13-4-114	Amend
R13-4-116	Amend
R13-4-201	Amend
R13-4-202	Amend
R13-4-203	Amend
R13-4-204	Amend
R13-4-205	Amend
R13-4-206	Amend
R13-4-208	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. § 41-1822(A)

Implementing statute: A.R.S. § 41-1822(A)(3) and (4), (B), and (D)

4. The effective date of the rule:

Under A.R.S. § 41-1823, R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111 will be effective six months after the rule package is filed with the Office of the Secretary of State.

Under A.R.S. § 41-1032(A), the remaining Sections will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Under A.R.S. § 41-1823, R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111 will be effective XXX, which is six months after filing with the Office of 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 rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 3068, Issue Date: October 18, 2024, Issue Number: 42, File number: R24-198

Notice of Proposed Rulemaking: 30 A.A.R. 3037, Issue Date: October 18, 2024, Issue Number: 42 File number: R24-196

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

Name: Michael Giammarino
Title: Program Administrator

Address: 2643 E. University Drive, Phoenix, AZ 85034
Telephone: (602) 774-9302
Email: mikeg@azpost.gov
Website: azpost.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:

In Article 1 of this rulemaking, the Board clarifies definitions, increases employment opportunities, increases efficiency, and enhances training and safety of peace officer recruits. Specifically:

- Clarifies the difference between inactive certification and lapsed certification;
- Deletes the definition of illegal because the word is used in the rules consistent with its ordinary dictionary meaning;
- Clarifies that the comprehensive examination is no longer a final examination;
- Indicates all forms of marijuana are treated the same when evaluating an individual's use;
- Indicates all forms of dangerous drugs and narcotics are treated the same when evaluating an individual's use;
- Indicates all forms of steroids are treated the same when evaluating an individual's use;
- Reduces from two years to six months the look-back period for pre-employment marijuana use;
- Reduces from 10 years to five years the look-back period for matters considered juvenile indiscretion;
- Requires an individual seeking appointment to provide a copy of the individual's driver license;
- Increases the number of years for which information regarding previous employers, schools, and residences must be provided;
- Deletes the requirement that a pre-appointment medical examination be provided by a Board-trained physician;
- Deletes the requirement that a signed copy of the Code of Ethics be maintained in each individual's record;
- Adds an immersive training requirement to the full-authority peace officer basic training course;
- Clarifies that a peace officer whose certification status is not active may serve as a specialist instructor;
- Requires a student to make up all missed hours of training before graduating from the Board-approved full-authority peace officer basic training course;
- Requires the Board to conduct an on-site inspection to determine whether a basic training course is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use; and
- Adds active assailant response to the topics required in the Board-approved full-authority peace officer basic training course.

In Article 2 of this rulemaking, the Board:

- Corrects the name of the Department;
- Deletes the juvenile indiscretion determination for admission to the academy;
- Deletes the requirement that an academy applicant provide personal references;
- Deletes reporting requirement;
- Deletes the requirement that specialized training for instructors be approved by the Board; and
- Deletes the requirement that lesson plans be annually reviewed.

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:

The Board believes the rulemaking will have minimal but important economic benefits, including enhancing public safety. Several amendments, including reducing the look-back period for potentially disqualifying behavior and clarifying the way in which disqualifying drugs are to be handled, will increase employment opportunities for those who want to be a peace officer.

Administering sections of the comprehensive examination throughout the full-authority peace officer basic training course may increase the rate of success for recruits to pass and, if a recruit is not going to be able to pass, the determination may be made sooner, providing a benefit to both the recruit and the academy.

Deleting the requirement that a pre-appointment medical examination be provided by a Board-trained physician streamlines the process for a potential recruit to obtain a medical examination and provides opportunities for all physicians to provide a pre-appointment examination. Other burdensome, administrative requirements, especially in Article 2, are deleted.

Requiring a student to makeup all missed hours of training before graduating from the Board-approved full-authority peace officer basic training course may increase the time required for a student to complete the course but protects public safety.

Adding active assailant response to the topics required in the Board-approved full-authority peace officer basic training course may add a cost for academies but addresses an important public safety issue.

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

Not applicable

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

The Board received a written comment from Amy E. Lake, a Supervisor—Physician Practice (Case Management Team) with Banner Occupational Health. Ms. Lake expressed concern about the repeal of the requirement that pre-certification physical examinations be provided by a Board-trained physician. The Board appreciates Ms. Lake's comment but believes requiring the Board to train physicians and to limit the opportunity to provide pre-certification physical examinations only to those trained by the Board is unnecessarily burdensome and inconsistent with the Board's responsibility to prescribe minimum qualifications for officers that relate to physical, mental, and moral fitness. Additionally, the rules contain a standard for the pre-certification physical examination. R13-4-107(B)(2)(b) indicates the physical examination is to be consistent with the standard of care for occupational medical examinations. And R13-4-116(E)(1)(h) clearly indicates that physical conditioning is a police proficiency skill taught as part of the basic training course.

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. § 41-1823 requires that a rule establishing a minimum qualification for law enforcement officers not go into effect until six months after being filed with the Secretary of State. In this rulemaking, this provision applies to R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111.

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:

Certification of an individual as a peace officer or correctional officer is not a general permit as defined under A.R.S. § 41-1001. Under A.R.S. § 41-1822(A) and (B), the Board is required to prescribe reasonable minimum qualifications for peace officers and correctional officers. The Board established those qualifications at R13-4-105, R13-4-109, and R13-4-202 and certifies only individuals who meet the prescribed qualifications. The rules comply with A.R.S. § 41-1037(A)(3).

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 directly applicable to the subject of these rules. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with federal law.

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

Not applicable

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 13. PUBLIC SAFETY
CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
ARTICLE 1. GENERAL PROVISIONS

Section
R13-4-101. Definitions
R13-4-103. Certification of Peace Officers
R13-4-104. Peace Officer Category Restrictions
R13-4-105. Minimum Qualifications
R13-4-106. Background Investigation Requirements
R13-4-107. Medical Requirements
R13-4-108. Agency Records and Reports
R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status
R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies
R13-4-110. Basic Training Requirements
R13-4-111. Certification Retention Requirements
R13-4-114. Minimum Course Requirements
R13-4-116. Academy Requirements

ARTICLE 2. CORRECTIONAL OFFICERS

Section
R13-4-201. Definitions
R13-4-202. Uniform Minimum Standards
R13-4-203. Background Investigation
R13-4-204. Records ~~and Reports~~
R13-4-205. Basic Training Requirements
R13-4-206. Field Training and Continuing Training Including Firearms Qualification
R13-4-208. Re-employment of State Correctional Officers

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

"Academy" means an entity that conducts the Board-prescribed basic training courses for full-authority or specialty peace officers.

"Adderall," as used in R13-4-105, means a combination drug containing salts of amphetamine that acts as a central nervous system stimulant. The combination may include amphetamine, methamphetamine, methylphenidate, dextroamphetamine, levoamphetamine, or other stimulants.

"Agency" means a law enforcement entity empowered by the state of Arizona.

"Appointment" means the selection by an agency of an individual to be a peace officer or peace officer ~~trainee~~ recruit that the agency believes meets the minimum qualifications for appointment specified in R13-4-105.

"Approved training program" means a course of instruction that meets Board-prescribed course requirements.

"Board" means the Arizona Peace Officer Standards and Training Board.

~~"Board-trained physician" means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.~~

"Cancellation" means the annulment of certified status without prejudice to reapply for certification.

"Certified" means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

~~"CFE"~~ "CE" means the Board-approved Comprehensive ~~Final~~ Examination that measures mastery of the knowledge and skills taught in the ~~Board-approved~~ Board-approved full-authority peace officer basic training course.

"Denial" means the refusal of the Board to grant certified status. The Board's denial may be temporary with an opportunity to reapply for certified status or permanent.

"Dangerous drug or narcotic" means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

"Full-authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

~~"Illegal" means in violation of federal or state statute, rule, or regulation.~~

"Inactive certification" means a certified peace officer has been terminated and as a result, the peace officer's certified status becomes inactive rather than lapsing. An individual with an inactive certification shall not function as a peace officer or be assigned the duties of a peace officer.

~~"Lapse"~~ "Lapsed certification" means the expiration of certified status.

"Open enrollee" means an individual who is admitted to an academy but is not appointed by an agency.

"Peace officer" has the meaning in A.R.S. § 1-215.

"Peace officer ~~trainee~~ recruit" means an individual recruited and appointed by an agency to attend an academy.

"Physician" means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

"Polygraph" means an instrument that is used to render a diagnostic opinion as to the honesty of an individual and records continuously, visually, permanently, and simultaneously, changes in cardiovascular, respiratory, and electro dermal patterns as minimum instrumentation standards.

"Resolve-in-the-future or RF" means a designation assigned by the Board regarding alleged misconduct of an inactive peace officer and requires an agency to resolve the alleged misconduct before the agency may appoint the peace officer.

~~"Restriction"~~ "Restricted certification" means the Board's limitation on duties allowed to be performed by a certified peace officer.

"Revocation" means the permanent withdrawal of certified status.

"Scenario" means immersive training in which a peace officer recruit demonstrates response skills by applying knowledge and solving problems in a simulated environment.

"Service ammunition" means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

"Service handgun" means the specific handgun or equivalent that a peace officer carries for use on duty.

"Specialty peace officer" means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or *Arizona Administrative Code*, as specified by the appointing agency's statutory powers and duties.

"Success criteria" means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

"Suspension" means the temporary withdrawal of certified status.

"Termination" means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

"Vendor" means an entity other than the Board or an agency that makes training available to peace officers.

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. Sheriffs who are elected are exempt from the requirement of certified status.

C. An individual shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:
1. Full-authority peace officer, and
2. Specialty peace officer.

E. Application for certification. An individual who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from the agency; and
3. Obtain either a certificate of graduation from a Board-prescribed full-authority Peace Officer Basic Training Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed full-authority Peace Officer Basic Training Course.

1. If more than one year but less than three years elapse after graduation from a Board-prescribed full-authority Peace Officer Basic Training Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the ~~CFE~~ CE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
2. If more than three years elapse after graduation from a Board-prescribed full-authority Peace Officer Basic Training Course, an open enrollee ~~shall again graduate from~~ may pursue certification only by repeating the Board-prescribed full-authority Peace Officer Basic Training Course ~~before obtaining an appointment from an agency~~.

G. Establishing or enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

H. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-104. Peace Officer Category Restrictions

A. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.

B. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:

1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under R13-4-110(A).

C. Reinstatement by an agency following termination by the agency for misconduct and physical separation from the agency for more than 30 days. Before reinstating a peace officer who was terminated for misconduct and physically separated from service for more than 30 days, the agency shall conduct the following background investigation and submit the results to the Board. The agency shall conduct the background investigation even if the peace officer's official date of reinstatement is within the 30 days of physical separation from the agency:

1. A personal history statement as described in R13-4-106(A);
2. A background interview regarding the time physically separated from the agency;
3. A polygraph examination as described in R13-4-106(C)(8) regarding the time physically separated from the agency and including:
   a. Were you involved in any criminal activity while physically separated from the agency;
   b. Did you have an encounter with law enforcement while physically separated from the agency;
   c. Was there a change in your medical condition while physically separated from the agency;
   d. Questions to update the information required under R13-4-105(A)(6) and (A)(9) through (15) and R13-4-106(C)(2) and (C)(4); and
   e. Is all the information you provided true, complete, and accurate.

D. Inactive ~~status~~ certification. ~~Certified status~~ The certification of a peace officer becomes inactive upon termination.

E. Lapse of ~~certified status~~ certification. The ~~certified status~~ certification of a peace officer lapses after three consecutive years ~~on~~ of inactive ~~status~~ certification.

F. Reinstatement from inactive ~~status~~ certification. A peace officer whose ~~certified status~~ certification is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:

1. In the same peace officer category, or;
2. As a specialty peace officer from inactive ~~status~~ certification as a full-authority peace officer.

G. Active ~~status~~ certification as a specialty peace officer does not prevent lapse of ~~certified status~~ active certification as a full-authority peace officer.

R13-4-105. Minimum Qualifications

A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:

1. Be a United States citizen;
2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;
3. Meet one of the following education standards:

a. Have a diploma from a high school recognized by the department of education of the jurisdiction from which the diploma is issued,
b. Have successfully completed a General Education Development (G.E.D.) examination,
c. Have a homeschool diploma or certificate of completion that is recognized as the equivalent of a high school diploma by the jurisdiction from which the homeschool diploma or certificate is issued,
d. Have a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual received the equivalent of a high school education, or
e. Have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;

4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual shall not begin an academy until the agency has completed the background investigation requirements at R13-4-106(C)(1), (C)(2), and (C)(4) through (9). However, an individual may begin an academy before the results of the fingerprint query referenced in R13-4-106(C)(3) are returned. The academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report, as specified in R13-4-106(C)~~(9)~~(10), is completed;
5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating ~~that~~ the individual's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, ~~or~~ have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
9. Not have illegally~~, as defined in R13-4-101,~~ possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
10. Not have illegally~~, as defined in R13-4-101,~~ possessed or used marijuana for any purpose within the past ~~two years~~ six months;
11. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
12. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
13. Not have a pattern of abuse of prescription medication;
14. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
15. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
16. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.

B. To determine whether an individual's possession or use of marijuana, or a dangerous drug or narcotic disqualifies the individual from being appointed or attending an academy, the Board shall use the following standards:

1. Marijuana.
   a. All forms of marijuana~~, including THC extracts, cannabis, hashish, marijuana extracts, and marijuana edibles, and all forms of use~~ will be treated the same;
   b. The individual has not illegally possessed or used marijuana within the ~~two years~~ six months before appointment as a peace officer; and
   c. The individual has never illegally possessed or used marijuana as a peace officer;
2. Dangerous drugs, ~~hallucinogens,~~ narcotics, and prescription drugs containing an active ingredient that is a narcotic or dangerous drug.
   a. The individual has not illegally possessed or used any of these substances:
      i. Within the seven years before appointment as a peace officer;
      ii. More than a total of five times for all substances combined;
      iii. More than one time for all substances combined since turning 21 years of age; and
      iv. As a peace officer;
   b. Dangerous drugs. All dangerous drugs~~, including methamphetamine, amphetamine, speed, spice, and bath salts~~ will be treated the same;

~~c. Hallucinogens. All hallucinogens, including peyote, mushrooms, ecstasy, lysergic acid diethylamide (LSD), ketamine, mescaline, and phencyclidine (PCP) will be treated the same;~~

~~d.~~c. Narcotics. All narcotics~~, including cocaine, heroin, and opioids~~ will be treated the same; and

~~e.~~d. Prescription medications. All prescription medications containing an active ingredient that is a narcotic or dangerous drug will be treated the same. Possession or use for recreational purposes of a prescription medication containing an active ingredient that is a narcotic or dangerous drug is disqualifying under subsection (B)(2);

3. Steroids.
   a. All steroids~~, including anabolic androgenic steroids and corticosteroids~~ will be treated the same;
   b. The individual has not illegally possessed or used a steroid within the three years before appointment as a peace officer; and
   c. The individual has never illegally possessed or used a steroid as a peace officer;
4. Adderall.
   a. All uses of Adderall, except as prescribed by a physician, will be treated the same;
   b. The individual has not possessed or used Adderall, except as prescribed by a physician, within the three years before appointment as a peace officer, and
   c. The individual has never possessed or used Adderall, except as prescribed by a physician, as a peace officer; and
5. Over-the counter products containing cannabidiol (CBD). The Board does not consider possession or use of over-the-counter products containing CBD, as allowed under federal and state law, as disqualifying an individual from appointment as a peace officer.

C. An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is determined to be disqualifying under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use should not be disqualifying. The petition shall:

1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
   a. The duration of possession or use,
   b. The motivation for possession or use,
   c. The time elapsed since the last possession or use,
   d. How the drug was obtained,
   e. How the drug was ingested,
   f. Why the individual stopped possessing or using the drug, and
   g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:

1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
   a. The conduct occurred when the individual was younger than age 18;
   b. The conduct occurred more than ~~10~~ five years before application for appointment;
   c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
   d. There is reason to believe ~~that~~ the individual's immaturity at the time of the conduct contributed substantially to the conduct;
   e. There is evidence ~~that~~ the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
   f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.
3. If the Board finds that the information submitted is sufficient for the Board to determine ~~that~~ the factors listed in subsection (D)(2) are true, the Board shall determine ~~that~~ the conduct constituted juvenile indiscretion and grant appointment.

E. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

F. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-106. Background Investigation Requirements

A. Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure ~~that~~ the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.

B. Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:

1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
2. Copy of a current, valid driver's license.
~~2.~~3. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
~~3.~~4. Record of any military discharge. A copy of the Military Service Record (DD Form 214#4 or NGB Form 22), which documents the character of service, separation code, and reentry code, is acceptable proof.
~~4.~~5. Personal references. The names and addresses of at least three people who can provide information as personal references.
~~5.~~6. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous ~~five~~ 10 years.
~~6.~~7. Residence history. The complete address for every location at which the individual has lived in the last ~~five~~ 10 years.

C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:

1. Query all the law enforcement agency records in jurisdictions listed in subsections ~~(B)(5) and (6)~~ (B)(6) and (7);
2. Query the motor vehicle division driving record from any state listed in subsections ~~(B)(5) and (6)~~ (B)(6) and (7);
3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections ~~(B)(5) and (6)~~ (B)(6) and (7);
5. Contact all personal references and employers listed in subsections ~~(B)(4) and (5)~~ (B)(6) and (7) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
6. Query the Board regarding the individual's certification status, reports of alleged misconduct by the individual, and whether the individual has a Board case with an RF designation;
7. Query all Arizona law enforcement agencies where the individual was appointed or applied for appointment as a peace officer regarding records maintained under R13-4-108(C);
8. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern:
    a. Minimum standards for appointment as required by R13-4-105,
    b. Truthfulness on the personal history statement,
    c. Commission of any crimes; and
    d. Any Board case with an RF designation;
9. If any of the information under subsections (C)(1) through (8) is more than a year old, the agency shall administer another polygraph examination and query the individual regarding any changes in the information previously received

under subsections (C)(1) through (8); and

10. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings. If the agency is unable to obtain all information required under subsections (C)(1) through (9), include in the report a description of the missing information and efforts made to obtain it.

R13-4-107. Medical Requirements

A. Medical, physical, and mental eligibility for certification.

1. An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
2. If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.

B. Medical examination process.

1. Medical history. An individual applying to be appointed shall provide to the examining~~, board-trained,~~ physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
2. Medical examination.
   ~~a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;~~
   ~~b.~~a. The examining~~, board-trained,~~ physician shall review the medical history statement and take an additional verbal history from the applicant;
   ~~c.~~b. The examining~~, board-trained,~~ physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
   ~~d.~~c. The examining~~, board-trained,~~ physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
   ~~e.~~d. The examining~~, board-trained,~~ physician shall make a report to the agency and provide a:
      i. Summary of the examination;
      ii. Description of any significant medical findings;
      iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer; and
      iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and
   ~~f.~~e. The examining~~, board-trained,~~ physician shall consult with the agency, upon request, about the report and the efficacy of any accommodations the agency deems reasonable.

C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-108. Agency Records and Reports

A. Agency reports. On forms prescribed by the Board, an agency shall submit:

1. A report by the agency head attesting ~~that~~ the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
2. A ~~report of the~~ termination report ~~of~~ regarding a peace officer~~. The report~~ shall be submitted to the Board within 15 days of the termination and include:
   a. The nature of the termination and effective date; and
   b. A ~~detailed~~ description of any termination for cause~~; and~~.
   ~~c.~~3. ~~A~~ If an agency determines the termination of a peace officer is for cause, the agency shall submit to the Board a detailed description of~~,~~ and supporting documentation for~~, any~~ the cause ~~existing for suspension or revocation of certified status~~.

B. Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:

1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;

2. A copy of reports submitted under subsection (A);
~~3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;~~
~~4.~~3. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106, including information obtained regarding a Board case with an RF designation;
~~5.~~4. A completed medical report required under R13-4-107; and
~~6.~~5. A record of all ~~continuing training, proficiency training, and firearms qualifications conducted~~ requirements under R13-4-111.

C. Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection ~~(B)(6)~~ (B)(5) shall be retained for three years ~~following completion of training~~; and
3. Reports of a polygraph examination given under R13-4-106~~(C)(6)~~(C)(8) shall be maintained in accordance with state law.

D. An agency shall make the records maintained under subsection (C) available, on request, to another agency completing a background investigation under R13-4-106(C).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
2. Willfully providing false information in connection with obtaining or reactivating certified status;
3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
5. Engaging in behavior that would be disqualifying under R13-4-105(B);
6. Using or being under the influence of spirituous liquor on duty without authorization;
7. Committing a felony~~, an~~ offense, an act that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
8. Committing malfeasance, misfeasance, or nonfeasance in office;
9. Performing the duties or exercising the authority of a peace officer without having active certified status;
10. Making a false or misleading statement, written or oral, to the Board or its representative;
11. Failing to furnish information in a timely manner to the Board or its representative on request; or
12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.

B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines ~~that~~ the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).

C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.

D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.

E. Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.

F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

A. Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.
1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral

to an independent hearing officer. At the public meeting, the Board shall determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.

2. The Board shall leave a restriction in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
3. The Board shall provide notice of restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.

B. Firearms qualification. If a peace officer fails to satisfy R13-4-111~~(C)~~(B), the peace officer shall not carry or use a firearm on duty.

C. ~~Continuing and proficiency~~ Annual training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:

1. Comprehensive examination. To be certified as a full-authority peace officer, an individual shall complete the ~~Board approved~~ Board-approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass all sections of the ~~CFE~~ CE.
   a. The Board shall ensure all sections of the ~~CFE~~ CE ~~is~~ are administered in a secure manner.
   b. The Board shall ensure all sections of the CE are administered at appropriate intervals throughout the full-authority peace officer basic training course. The Board shall ensure ~~that~~ the last section of the ~~CFE~~ CE is administered during the final two weeks of the full-authority peace officer basic training course.
   c. An individual passes the ~~CFE~~ CE by achieving a score of at least 70 percent on each ~~of the three blocks~~ section of the ~~CFE~~ CE when each ~~block~~ section is scored separately.
   d. An individual who fails ~~one or more blocks~~ a section of the ~~CFE~~ CE may retake the failed ~~block~~ section ~~one time before the individual is scheduled to graduate from the academy~~ within seven days of the original examination date if the individual remains appointed by the original appointing agency or enrolled in the academy.
   ~~e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.~~
   ~~f.~~e. An individual who fails a ~~second~~ retake of a ~~block~~ section of the ~~CFE~~ CE, as described in subsection ~~(A)(1)(c)~~ (A)(1)(d), may pursue certification only by repeating the ~~Board approved~~ Board-approved full-authority peace officer basic training course.
   ~~g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).~~
2. Scenarios. To be certified as a full-authority peace officer, an individual shall complete the Board-approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and demonstrate skills by passing a series of scenarios.
   a. The Board shall ensure each scored scenario is marked as either pass or fail.
   b. An individual who fails a scenario may immediately take a remedial scenario involving the same skill.
   c. An individual who fails a remedial scenario may pursue certification only by repeating the Board-approved full-authority peace officer basic training course.

~~2.~~3. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the ~~Board approved~~ Board-approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass ~~blocks~~ all sections of the ~~CFE~~ CE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a~~:~~

~~1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or~~

~~2.~~ ~~Field~~ field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.

C. Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.

D. Waiver of required training.

1. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if:
   a. The individual's certified status is lapsed;

b. The individual has functioned in the capacity of a peace officer in another state, graduated from a Peace Officer Standards and Training Academy, and worked for at least one year as a peace officer; or
c. The individual graduated from a federal law enforcement academy, ~~and~~ worked for at least one year as a law enforcement officer, and meets the requirement under subsection (D)(2)(e)(i).

2. The Board shall review the application and grant a waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:
a. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
b. The individual meets the minimum qualifications listed in R13-4-105;
c. The individual complies with the requirements of R13-4-103(E)(1);
d. The appointing agency complies with the requirements of R13-4-106(C);
e. The individual successfully completes an examination measuring the individual's comprehension of the ~~Board approved~~ Board-approved full-authority peace officer basic training course as follows:
i. If the individual has experience as a certified peace officer ~~in another state or~~ for a federal law enforcement agency, ~~and~~ submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's ~~Board approved~~ Board-approved full-authority peace officer basic training course, ~~the individual shall pass~~ and passes all ~~blocks~~ sections of the ~~CFE~~ CE; and
ii. If the individual's certification is lapsed, the individual shall pass all ~~blocks~~ sections of the ~~CFE~~ CE; and
iii. ~~The~~ Applicable provisions in ~~subsections (A)(1)(a), (c), and (e) through (g)~~ subsection (A)(1) apply to this subsection; and
f. In addition to the examination required under subsection (D)~~(5)~~(2)(e), the individual demonstrates proficiency in the areas of physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)~~(1)~~.

E. Required inspections. Before an agency provides the Board-approved full-authority peace officer basic training course, Board staff shall conduct an onsite inspection to ensure the agency is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use. Following the inspection, Board staff shall provide the agency with an inspection report identifying any deficiencies and necessary corrective action.

~~E.~~**F.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-111. Certification Retention Requirements

A. ~~Training~~ Annual training required.
1. A full-authority or specialty peace officer shall complete 12 hours of training each year beginning January 1 following the date the officer is certified.
2. Training course standards for peace officers. The provider of a training course for peace officers shall ensure ~~that~~:
a. The course curriculum consists of instruction on topics related to law enforcement operations and peace officer functions and skills;
b. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
c. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit; and
d. If an agency wishes to host a vendor-provided training course:
i. Both the agency and vendor shall comply with the provisions of subsection (A)(2); and
ii. The agency shall provide the statement described under subsection (A)(2)(b).
3. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(b). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.
4. The Board may reject a training course if the Board finds the course content does not serve the best interest of the law enforcement profession or jeopardizes public welfare and safety.

B. ~~Firearms~~ Annual firearms qualification required. In addition to the training required under subsection (A), a peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun, ~~and~~ service, frangible, or practice ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
a. A firearms qualification course is a course:
i. Prescribed under R13-4-116(E)(1), or
ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).

b. The provider of a firearms qualification course shall ensure ~~that~~ the course includes:
   i. A timed accuracy component;
   ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
   iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms target identification and judgment course shall ensure ~~that~~ the course includes:
      i. A timed accuracy component;
      ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure ~~that~~ the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator shall ensure ~~that~~ only an instructor who meets the requirements of this Section ~~facilitates~~ instructs a Board-prescribed course.
1. Instructor classifications.
   a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
   b. Specialist instructor. An individual, other than an active Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
   c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-116(E)(1)(h).
2. Instructor qualification standards.
   a. A general instructor shall meet the following requirements:
      i. Have two years' experience as a certified peace officer;
      ii. Maintain instructional competency; and
      iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course.
   b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or (A)(2)(b)(iv):
      i. Be nominated by the administrator of an academy authorized to provide a peace officer basic training course;
      ii. Maintain instructional competency;
      iii. Possess a professional license or certification other than ~~a~~ an active peace officer certification that relates to the topics to be taught; and
      iv. Provide documentation to the academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field.
   c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
      i. Meet the requirements for general instructor;
      ii. Maintain instructional competency;
      iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-116(E)(1)(h) that includes a competency assessment to instruct in that area within the full-authority peace officer basic training course listed in R13-4-116(E); and
      iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the full-authority peace officer basic training course listed in R13-4-116(E).
   d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-116(E)(1)(h) for which the proficiency instructor seeks qualification.
3. Instructional competency. An academy administrator shall immediately notify the Board in writing of any instructor:

a. Who jeopardizes the safety of students or the public,
b. Whose instruction violates acceptable training standards,
c. Who is grossly deficient in performance as an instructor, or
d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the full-authority peace officer basic training course.

4. If the Board determines ~~that~~ an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course ~~facilitated~~ instructed by the instructor does not meet the requirements of this Section.

B. Curriculum standards. An academy administrator or agency head shall ensure ~~that~~ the curriculum for a Board-prescribed course meets the following standards:

1. Curriculum.
   a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
   b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
2. Curriculum format standard. The curriculum consists of the following:
   a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
   b. Lesson plans containing:
      i. Course title,
      ii. Hours of instruction,
      iii. Materials and aids to be used,
      iv. Instructional strategy,
      v. Topic areas in outline form,
      vi. Performance objectives or learning activities,
      vii. Success criteria, and
      viii. Reference material;
   c. Performance objectives consisting of at least the following components:
      i. The student, which is an individual or group that performs a behavior as the result of instruction;
      ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
      iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form; and
   d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
      i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
      ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties~~; and~~.
   ~~e. The following decimal numbering system to provide a logical means of organization:~~
      ~~i. Functional area (1.0, 2.0, 3.0),~~
      ~~ii. Topic area (1.1.0, 1.2.0, 1.3.0), and~~
      ~~iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).~~

C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

R13-4-116. Academy Requirements

A. Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.

B. The academy administrator shall ensure ~~that~~ the academy has the following:

1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
2. Chairs with tables or arms for writing;
3. Visual aid devices for classroom presentation;
4. Equipment in good condition for specialized instruction;
5. A safe driving ~~range~~ track for conducting the ~~defensive~~ vehicle and pursuit ~~driving~~ operations course;
6. A ~~firing~~ firearm range with adequate backstop to ensure the safety of all individuals on or near the range; and

7. A safe location for practical exercises including assessing physical conditioning, defensive tactics, and high-risk vehicle stops.

C. Administrative requirements. The academy administrator shall ensure ~~that~~ the academy:

1. Establishes and maintains written policies, procedures, and rules concerning:
   a. Operation of the academy,
   b. Entrance requirements,
   c. Student and instructor conduct, and
   d. Administering examinations;
2. Admits only individuals who meet the requirements of R13-4-105, as electronically or otherwise attested to the Board by the appointing agency or, in the case of an open enrollee, by the academy administrator, ~~on form A1 or A4, as applicable, which is submitted to the Board~~ on or before the first day of training;
3. Administers to each student at the beginning of each academy session a written examination ~~prescribed by the Board~~ measuring competency in reading and writing English;
4. Schedules sufficient time for the ~~CFE~~ CE to be administered as required by R13-4-110(A); and
5. Uses only instructors who are qualified under R13-4-114(A).

D. Academic requirements. The academy administrator shall ensure ~~that~~ the academy:

1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
4. Reviews examination results with each student and ensures ~~that~~ the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
5. Requires a student to ~~complete~~ successfully complete oral or written examinations that cover all topics ~~in all functional areas~~ of the Board-approved full-authority peace officer basic training course before graduating.
   a. Successful completion of an examination is a score of 70 percent or greater;
   b. For a student who scores less than 70 percent, the academy shall:
      i. Provide remedial training, and
      ii. Re-examine the student in the area of deficiency; and
   c. The academy shall allow a student to retake each examination only once;
6. Requires a student to qualify with firearms as described in ~~R13-4-116(E)~~ subsection (E);
7. Ensures ~~that~~ a student meets the success criteria for police proficiency skills under subsection (E)(1);
8. Provides remedial training for a student who misses a class from the Board-approved full-authority peace officer basic training course before allowing the student to graduate; and
9. Refuses to graduate a student who ~~is absent more than 32 hours~~ has missed and failed to make-up any classes from the ~~Board approved~~ Board-approved full-authority peace officer basic training course ~~or 16 hours from the specialty peace officer basic training course~~.

E. Basic course requirements. The academy administrator shall ensure ~~that~~ the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.

1. The ~~Board-approved~~ Board-approved full-authority peace officer basic training course shall include all of the following topics ~~listed in each of the following functional areas~~:
   a. ~~Functional Area I –~~ Introduction to Law Enforcement.
      i. Criminal justice systems,
      ii. History of law enforcement,
      iii. Law enforcement services,
      iv. Supervision and management,
      v. Ethics and professionalism, and
      vi. Stress management.
   b. ~~Functional Area II –~~ Law and Legal Matters.
      i. Introduction to criminal law;
      ii. Laws of arrest;
      iii. Search and seizure;
      iv. Rules of evidence;
      v. Summonses, subpoenas, and warrants;
      vi. Civil process;
      vii. Administration of criminal justice;

viii. Juvenile law and procedures;
ix. Courtroom demeanor;
x. Constitutional law;
xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
xii. Liability issues.

c. ~~Functional Area III -~~ Patrol Procedures.
i. Patrol and observation ~~(part 1),~~
~~ii. Patrol and observation (part 2),~~
~~iii.~~ ii. Domestic violence,
~~iv.~~ iii. Behavioral health crisis response,
~~v.~~ iv. Crimes in progress,
~~vi.~~ v. Crowd control formations and tactics,
~~vii.~~ vi. Bomb threats and disaster training,
~~viii.~~ vii. Intoxication cases,
~~ix.~~ viii. Communication and police information systems,
~~x.~~ ix. Hazardous materials,
~~xi.~~ x. Bias-motivated crimes,
~~xii.~~ xi. Fires, and
~~xiii.~~ xii. Civil Disputes.

d. ~~Functional Area IV -~~ Traffic Control.
i. Impaired driver cases;
ii. Traffic citations;
iii. Traffic collision investigation;
iv. Traffic collision (practical);
v. Traffic direction; and
vi. Substantive Traffic Law, A.R.S. Title 28.

e. ~~Functional Area V -~~ Crime Scene Management.
i. Preliminary investigation and crime scene management,
ii. Crime scene investigation (practical),
iii. Physical evidence procedures,
iv. Interviewing and questioning,
v. Fingerprinting,
vi. Sex crimes investigations,
vii. Death investigations including sudden infant death syndrome,
viii. Organized crime activity,
ix. Investigation of specific crimes, and
x. Narcotics and dangerous drugs.

f. ~~Functional Area VI -~~ Community and Police Relations.
i. Cultural awareness,
ii. Victimology,
iii. Interpersonal communications,
iv. Crime prevention, and
v. Police and the community.

g. ~~Functional Area VII -~~ Records and Reports. Report writing.

h. ~~Functional Area VIII -~~ Police Proficiency Skills.
i. First aid,
ii. Less lethal operations (including certification),
iii. Firearms training (including firearms qualification),
iv. Physical conditioning,
v. High-risk stops,
vi. Arrest and control tactics,
vii. Vehicle ~~operations,~~ and pursuit operations,
viii. ~~Pursuit operations~~ Active assailant response.

i. ~~Functional Area IX -~~ Orientation and Introduction.
i. Examinations and reviews,
ii. Counseling, and
iii. Non-Board specified courses.

2. The specialty peace officer basic training course shall include all of the topics necessary from the ~~Board approved~~ Board-approved full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
3. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).

F. Records required. The academy administrator shall ensure ~~that~~ the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
2. A manual containing the policies, procedures, and rules of the academy;
3. A document signed by each student indicating ~~that~~ the student received and read a copy of the academy policies, procedures, and rules;
4. A copy of all lesson plans used by instructors;
5. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
6. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
7. An attendance roster for all classes or other record that identifies absent students;
8. A record of classes missed by each student and the remedial training received;
9. A record of disciplinary actions for all students; and
10. A file for each student containing the student's performance history.

G. Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
4. No later than the tenth day of each month, a report containing:
   a. A summary of training activities and progress of the academy class to date;
   b. Unusual occurrences, accidents, or liability issues; and
   c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.

H. Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.
1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines ~~that~~ the academy is not in compliance with the standards of this Section or R13-4-114.

J. If the Board finds ~~that~~ an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.

K. An academy administrator shall ensure ~~that~~ an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

ARTICLE 2. CORRECTIONAL OFFICERS

R13-4-201. Definitions

The definitions in A.R.S. § 41-1661 apply to this Article. Additionally, unless the context otherwise requires:

"Academy" means the Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections, Rehabilitation and Reentry in Tucson, Arizona, or a satellite location authorized by the Director.

"Appointment" means the selection of an individual as a correctional officer.

"Applicant" means an individual who applies to be a correctional officer.

"Cadet" means an individual who is attending the academy and, upon graduation, will become a state correctional officer.

"Dangerous drug or narcotic" is defined in R13-4-101.

"Department" means the Arizona Department of Corrections, Rehabilitation and Reentry.

"State correctional officer" means an individual employed by the Department in the correctional officer series.

R13-4-202. Uniform Minimum Standards

A. To be admitted to the academy for training as a state correctional officer, an individual shall:

1. Be a citizen of the United States or eligible to work in the United States;
2. Be at least 18 years of age by the date of graduation from the academy;
3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);
4. Have a valid Arizona driver's license ~~(Class 2 or higher)~~ by the date of graduation from the academy;
5. Undergo a complete background investigation that meets the standards of R13-4-203;
6. Undergo a physical examination (within 12 months before appointment) as prescribed by the Director by a licensed physician designated by the Director;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have used a dangerous drug or narcotic, as defined at A.R.S. § 13-3401, within the past five years;
9. Not have a pattern of abuse of prescription medication; and
10. Not have committed a felony or a misdemeanor of a nature that the ~~Board~~ Director determines has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).

~~**B.** If the Director wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109, the Director may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion by complying with R13-4-105(D).~~

~~**C.**~~**B.** Code of Ethics. To enhance the quality of performance and the conduct and the behavior of correctional officers, an individual appointed to be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the Code:

"I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing that I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the Constitutions of the United States and the state of Arizona, and all federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior that could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation that could lead any person to expect official favors. I shall not accept or solicit from anyone, either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, that is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national

origin. I will not sexually harass or condone sexual harassment of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona."

R13-4-203. Background Investigation

A. The Department shall conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted under subsection (B) and the results of the background investigation required in subsection (C) to determine whether the individual meets the requirements of R13-4-202 and the individual's personal history statement is accurate and truthful.

B. Personal history. An applicant shall complete and submit to the ~~employing agency a~~ Department, the personal history statement ~~on a form~~ prescribed by the ~~Board~~ Department. The applicant shall complete the personal history statement before the start of the background investigation and ensure ~~that~~ the personal history statement provides the information necessary for the Department to conduct the investigation described in subsection (C).

C. Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and retain documents establishing that the applicant meets the standards specified in this Article. At a minimum, this documentation shall include:

1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of any of the following regarding the applicant is acceptable proof:
   a. Birth certificate,
   b. United States passport,
   c. Certification of United States Naturalization,
   d. Certificate of Nationality, or
   e. Immigration Form I-151 or I-1551.
2. Proof of the applicant's valid driver's license. A copy of the applicant's driver's license and written verification of the applicant's driving record from the applicable state's Department of Transportation, Motor Vehicle Division, is required proof.
3. Proof ~~that~~ the applicant is a high school graduate or its equivalent. The following are acceptable proof:
   a. A copy of a diploma from a high school recognized by the department of education of the jurisdiction in which the diploma is issued;
   b. A copy of a certificate showing successful completion of the General Education Development (G.E.D.) test; or
   c. In the absence of proof of high school graduation or successful completion of the G.E.D. test,
      i. A copy of a degree or transcript from an accredited college or university showing successful completion of high school or high school equivalency;
      ii. A United States Military Service Record DD Form 214~~-#4~~ with the Education block indicating high school completion,
      iii. A copy of a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual named received the equivalent of a high school education; or
      iv. Other evidence of high school education equivalency submitted to the Board for consideration.
4. Record of any military discharge. A copy of the Military Service Record (DD Form 214~~-#4~~ or NGB Form 22), which documents the character of service, separation code, and reentry code, is acceptable proof.
5. Results of a psychological fitness assessment approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.

~~6. Personal references: The names and addresses of at least three individuals who can provide information regarding the applicant.~~

~~7.~~6. Previous employers or schools attended. The names and addresses of all employers of and schools attended by the applicant for the past five years.

~~8.~~7. Residence history. The complete address for every location at which the applicant has lived in the last five years.

~~9.~~8. Law enforcement agency records. The Department shall request and review law enforcement agency records in jurisdictions where the applicant has lived, worked, or attended school in the past five years. The Department shall document the information obtained.

~~10.~~9. Criminal history query. The Department shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review the criminal history record for any arrest or conviction to determine compliance with R13-4-202.

~~11.~~10. Fingerprint card. The Department shall obtain from an applicant and submit a fingerprint card for processing by the Arizona Department of Public Safety and the Federal Bureau of Investigation.

a. The Department shall process a fingerprint card for an applicant entering the academy, except as provided in subsections ~~(C)(9)(b) and (c)~~ (C)(10)(b) and (c). The Department shall process a fingerprint card for an applicant even if the applicant has a processed applicant fingerprint card from a previous employer.
b. If the fingerprint card is not fully processed when the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy if:
   i. A computerized criminal history check has been made and the results are on file with the Department, and
   ii. The applicant meets all other requirements of this Section and R13-4-202.
c. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of admission to the academy, the individual does not meet the requirements of this Section and may be terminated from the academy. The Department may extend the deadline for receipt of a processed fingerprint card an additional 15 weeks. An individual terminated from the academy under this subsection may be re-employed under R13-4-208 when a fully processed fingerprint card is received.

R13-4-204. Records ~~and Reports~~

~~**A.** Reports. The Department shall submit to the Board a report by the Director attesting that each individual completing the academy meets the requirements of R13-4-202.~~

~~**B.**~~**A.** ~~Records.~~ The Department shall make ~~Department~~ records available upon request to ~~the Board upon request of~~ the Board or its staff. The Department shall keep the records in a central location. The Department shall maintain:

~~1. A copy of reports submitted under subsection (A);~~
~~2.~~1. All written documentation obtained or recorded under R13-4-202 and R13-4-203; and
~~3.~~2. A record of all advanced training, specialized training, continuing education, and firearms qualification conducted under R13-4-206.

~~**C.**~~**B.** ~~Record retention.~~ The Department shall maintain the records required by this Section as follows:

1. For applicants investigated under R13-4-203 who are not appointed: two years; and
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection ~~(B)(3)~~ (A)(2), shall be retained for three years.

R13-4-205. Basic Training Requirements

A. ~~Required training for state correctional officers.~~ Before appointment as a state correctional officer, an individual shall complete a Board-approved basic correctional officer training program. This program shall meet or exceed the requirements of this Section.

~~**B.** Curricula or training material approval time frames.~~

~~1. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for curricula or training material that require Board approval under this Section and R13-4-206.~~
   ~~a. Administrative completeness time frame: 60 days.~~
   ~~b. Substantive review time frame: 60 days.~~
   ~~c. Overall time frame: 120 days.~~
~~2. The administrative completeness review time frame begins on the date the Board receives the documents required by this Section or R13-4-206.~~
   ~~a. Within 60 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.~~
   ~~b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness time frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.~~
   ~~c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.~~
   ~~d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the Department.~~
~~3. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.~~
   ~~a. During the substantive review time frame, the Board may make one comprehensive written request for additional information.~~
   ~~b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.~~
   ~~c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.~~
   ~~d. When the substantive review is complete, the Board shall grant or deny approval.~~

~~C.~~**B.** Basic course specifications.

1. The Department shall develop the curriculum for the basic correctional officer training program.
   a. The curriculum shall include courses in the following functional areas.
      i. Functional Area I - Ethics and Professionalism;
      ii. Functional Area II - Inmate Management;
      iii. Functional Area III - Legal Issues;
      iv. Functional Area IV - Communication Skills;
      v. Functional Area V - Officer Safety, including firearms;
      vi. Functional Area VI - Applied Skills;
      vii. Functional Area VII - Security, Custody, and Control;
      viii. Functional Area VIII - Conflict and Crisis Management; and
      ix. Functional Area IX - Medical Emergencies, and Physical and Mental Health.
   b. The curriculum shall also contain administrative time for orientation, counseling, testing, and remedial training.
2. The Department shall ensure ~~that~~ curriculum submitted to the Board for approval contains lesson plans that include:
   a. Course title,
   b. Hours of instruction,
   c. Materials and aids to be used,
   d. Instructional strategy,
   e. Topic areas in outline form,
   f. Success criteria, and
   g. The performance objectives or learning activities to be achieved.
3. After initial approval by the Board, the Director or the Director's designee shall~~:~~ submit changes to a lesson plan to the Board for approval.
   ~~a. Annually review each lesson plan submitted to and approved by the Board under subsection (C)(2); and~~
   ~~b. If an approved lesson plan has been changed, submit the changed lesson plan to the Board for approval; or~~
   ~~c. If an approved lesson plan has not been changed, sign and date an acknowledgment of approval for each lesson plan.~~
4. The Department shall ensure ~~that~~ the following three components are specified for each performance objective:
   a. The learner, which is an individual or group that performs a behavior as the result of instruction;
   b. The behavior, which is an observable demonstration by the learner at the end of instruction that shows ~~that~~ the objective is achieved and allows evaluation of the learner's capabilities relative to the behavior;
   c. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner will perform the stated behavior. Unless specified otherwise, the instruction and evaluation shall be in written or oral form.
5. The Department shall ensure ~~that~~ instructors of basic correctional officer training courses meet proficiency requirements developed by the Department ~~and approved by the Board~~. The Department shall ensure ~~that~~ proficiency requirements for instructors include education, experience, or a combination of both. The Department shall ~~affirm to the Board that~~ ensure each instructor has the necessary qualifications before the instructor delivers any instruction. In addition to these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall complete specialized training developed by the Department ~~and approved by the Board~~. Instructors shall use lesson plans described in subsection ~~(C)(2)~~ (B)(2).

~~D.~~**C.** Academic requirements.

1. A cadet shall be given a combination of written, oral, or practical demonstration examinations capable of measuring the cadet's attainment of the performance objectives in each approved lesson plan.
2. Academy staff shall review examination results and academic progress with each cadet weekly. Academy staff shall ensure ~~that~~ each cadet is informed of correct responses.
3. A cadet shall complete all examinations before graduating from the academy. To successfully complete a written or oral examination, a cadet shall score at least 70 percent.
   a. If a cadet receives a score of less than 70 percent, the academy shall provide the cadet with remedial training in areas of deficiency.
   b. The academy shall not offer a cadet more than one re-examination per lesson plan.
4. A cadet shall qualify with firearms as specified in subsection ~~(C)~~ (B). ~~Firearms qualification shall include:~~
   ~~a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;~~
   ~~b. Seven-shot qualification course with service shotgun; and~~
   ~~c. Target identification and discrimination course.~~

5. A cadet shall meet success criteria described in the Board-approved curriculum for the proficiency skills of self-defense, physical conditioning, and medical emergencies, as approved under ~~R13-4-205(C)~~ subsection (B).
6. The academy shall provide a cadet who does not attend a lesson with remedial training before graduation.
7. The academy shall not graduate a cadet who attends less than 90 percent of the total hours of basic training.

~~E.~~**D.** Exceptions. A cadet shall not function as a state correctional officer except:

1. As ~~a~~ part of an exercise within the approved basic training program, if the cadet is under the direct supervision and control of a state correctional officer; or
2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to, riots, insurrections, and natural disasters. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of ~~R13-4-205(D)(4)~~ subsection (C)(4).

~~F.~~**E.** Waiver of required training. The Board shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if an applicant:

1. Successfully completes a basic corrections officer training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic correctional officer training course and has a minimum of one year of experience as a correctional officer. The applicant shall include verification of previous experience and training with the application for waiver;
2. Meets the minimum qualifications specified in R13-4-202; and
3. Successfully completes a comprehensive examination measuring comprehension of the Board-approved basic correctional officer training course. The comprehensive examination shall be prepared by the Department, approved by the ~~Board~~ Director, and include a written test and practical demonstrations of proficiency in firearms, physical conditioning, and defensive tactics.

R13-4-206. Field Training and Continuing Training Including Firearms Qualification

A. Field training requirement. Before graduating from the academy or within two months after graduation, a cadet or state correctional officer shall participate in and successfully complete a ~~Board-approved~~ Department approved field training program.

B. Continuing training requirement.

1. A state correctional officer shall receive eight hours of ~~Board-approved~~ Board-approved continuing training each calendar year beginning January 1 following the date the officer ~~received certified status~~ graduated from the academy.
2. In addition to the training required under subsection (B)(1), a state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1 following the date the officer ~~received certified status~~ graduated from the academy. The firearms qualification training shall meet the standards specified under subsection (F) and shall not be used to satisfy the requirements of ~~R13-4-206~~ subsection (C).

C. Continuing training requirements may be fulfilled by:

1. Advanced training programs, or
2. Specialized training programs.

D. Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs that include courses enhancing a correctional officer's knowledge, skills, or abilities for the job that the correctional officer performs. The courses within an advanced training program shall include advanced or remedial training in any topic listed in R13-4-205~~(C)~~(B).

E. Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs that address a particular need of the Department and target a select group of officers. The courses within a specialized training program shall include topics different from those in the basic corrections training program or any advanced training programs.

F. Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following ~~the receipt of certified status~~ graduation from the academy by completing a Board-prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board-prescribed target identification and judgment course. All courses shall be presented by a firearms instructor who meets the requirements under R13-4-205(B)(5).

~~1. Firearms qualification course standards.~~

~~a. A firearms qualification course is:~~

~~i. A course prescribed under R13-4-205(C); or~~

~~ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).~~

~~b. All firearms qualification courses shall include:~~

~~i. A timed accuracy component;~~

~~ii. A type and style of target that is equal to, or more difficult than, the targets used under R13-4-205(C); and~~

~~iii. Success criteria that are equal to, or more difficult than, the success criteria used under R13-4-205(C).~~

~~2. Firearms target identification and judgment course standards.~~

~~a. A firearms target identification and judgment course is:~~

~~i. A course prescribed under R13-4-205(C); or~~

~~ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).~~

~~b. All firearms target identification and judgment courses shall include:~~

~~i. A timed accuracy component;~~

~~ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and~~

~~iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C),~~

~~3. All courses shall be presented by a firearms instructor who meets the requirements under R13-4-205(C)(5).~~

R13-4-208. Re-employment of State Correctional Officers

A. A state correctional officer who terminates employment may be re-employed by the Department within two years from the date of termination if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment.

B. A state correctional officer who terminates employment may be re-employed by the Department if re-employment is sought more than two years but less than three years from the original date of termination, if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment and completes the waiver provisions of R13-4-205~~(F)~~(E).

C. A former state correctional officer who seeks re-employment more than three years from the date of termination shall meet all the requirements of this Article at the time of re-employment.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

1. Identification of the rulemaking:

As required under A.R.S. § 41-1039(A), authorization to proceed with this rulemaking was provided by the Governor's office on August 29, 2024. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided on December 26, 2024.

In Article 1 of this rulemaking, the Board:

- Clarifies the difference between inactive certification and lapsed certification;
- Deletes the definition of illegal because the word is used in the rules consistent with its ordinary dictionary meaning;
- Clarifies that the comprehensive examination is no longer a final examination;
- Indicates all forms of marijuana are treated the same when evaluating an individual's use;
- Indicates all forms of dangerous drugs and narcotics are treated the same when evaluating an individual's use;
- Indicates all forms of steroids are treated the same when evaluating an individual's use;
- Reduces from two years to six months the look-back period for pre-employment marijuana use;
- Reduces from 10 years to five years the look-back period for matters considered juvenile indiscretion;
- Requires an individual seeking appointment to provide a copy of the individual's driver license;
- Increases the number of years for which information regarding previous employers, schools, and residences must be provided;
- Deletes the requirement that a pre-appointment medical examination be provided by a Board-trained physician;
- Deletes the requirement that a signed copy of the Code of Ethics be maintained in each individual's record;
- Adds an immersive training requirement to the full-authority peace officer basic training course;

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

- Clarifies that a peace officer whose certification status is not active may serve as a specialist instructor;
- Requires a student to make up all missed hours of training before graduating from the Board-approved full-authority peace officer basic training course;
- Requires the Board to conduct an on-site inspection to determine whether a basic training course is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use; and
- Adds active assailant response to the topics required in the Board-approved full-authority peace officer basic training course.

In Article 2 of this rulemaking, the Board:

- Corrects the name of the Department;
- Deletes the juvenile indiscretion determination for admission to the academy;
- Deletes the requirement that an academy applicant provide personal references;
- Deletes reporting requirement;
- Deletes the requirement that specialized training for instructors be approved by the Board; and
- Deletes the requirement that lesson plans be annually reviewed.

a. <u>The conduct and its frequency of occurrence that the rule is designed to change:</u>

The rulemaking enhances public safety and increases employment opportunities for those who want to be a peace officer by eliminating unnecessary and burdensome administrative requirements. Public safety is increased by requiring students in the full-authority peace officer basic training course to makeup all missed hours of training and adding both active assailant response and immersive training to the full-authority peace officer basic training course. Employment opportunities are increased by reducing the look-back period for both potentially disqualifying behavior and instances of juvenile indiscretion and by clarifying the way in which disqualifying drugs are to be handled

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

Until the rulemaking is completed, the important benefits of the rulemaking, including clarified definitions, increased employment opportunities, increased efficiency, and enhanced training and safety of peace office recruits, will not occur.

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

When the numerous changes included in this rulemaking are completed, the Board believes important economic benefits will result and public safety will be enhanced.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board believes the rulemaking will have minimal but important economic benefits, including enhancing public safety. Several amendments, including reducing the look-back period for potentially disqualifying behavior and clarifying the way in which disqualifying drugs are to be handled, will increase employment opportunities for those who want to be a peace officer.

Administering sections of the comprehensive examination throughout the full-authority peace officer basic training course may increase the rate of success for recruits and, if a recruit is not going to be able to pass the comprehensive examination, the determination may be made sooner, providing a benefit to both the recruit and the academy.

Deleting the requirement that a pre-appointment medical examination be provided by a Board-trained physician streamlines the process for a potential recruit to obtain a medical examination and provides opportunities for all physicians to provide a pre-appointment examination. It also relieves the Board from having to train physicians to provide pre-appointment medical examinations. Other burdensome, administrative requirements, especially in Article 2, are deleted.

Requiring a student to makeup all missed hours of training before graduating from the Board-approved full-authority peace officer basic training course may increase the time required for a student to complete the course but protects public safety.

Adding active assailant response and immersive training to the Board-approved full-authority peace officer basic training course adds a cost for academies but addresses important public safety issues.

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

Name: Michael Giammarino

Title: Program Administrator

Address: 2643 E. University Drive, Phoenix, AZ 85034

Telephone: (602) 774-9302

Email: mikeg@azpost.gov

Website: azpost.gov

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

Individuals seeking to participate in the Board-prescribed full-authority basic training course or training as a state correctional officer, law enforcement agencies seeking to employ peace officers, academies providing the Board-prescribed full-authority basic training course, and the Board and Department are persons directly affected by, bearing the costs of, and benefitting from this rulemaking. There are currently 158 law enforcement agencies, 14,914 peace officers, and 4,809 correctional officers in Arizona. There are 17 peace officer training academies and one training academy for correctional officers.

During the last fiscal year, 1,229 individuals participated in the Board-prescribed full-authority basic training course at an academy. The Board believes no one was affected by the reduced look-back period regarding juvenile indiscretion and the reduced look-back period regarding pre-employment use of marijuana not being in place because law enforcement agencies were able to petition the Board for approval of a waiver from the current provisions. The amended requirements will reduce the need for waiver petitions. Of those who started but did not complete the full-authority basic training course, 12 did so because they were unable to pass a section of comprehensive examination. Other reasons for not completing the Board-prescribed full-authority basic training course included dismissal for rule violation, physical injury, and deciding law enforcement was not a desired career.

During the last fiscal year, 1,212 individuals participated in training as a state correctional officer. The Department does not track the reason for candidate disqualification but historically, there have been few cases in which juvenile indiscretion was a factor in disqualification.

The Board-prescribed full-authority basic training course has a minimum 678.5 hour requirement. Most academies have expanded the training time to add a variety of non-Board

curriculum topics. As a result of this rulemaking, academies must include training regarding active assailant response and integrate demonstration of skill development through use of scenarios. Both of these will increase the time required to complete the Board-prescribed full-authority basic training course. It is estimated that adding training regarding active assailant response and integrating demonstration of skill development through use of scenarios will require an additional 15.5 hours of training. In January 2024, Directors of by all 17 academies asked that this training be added. Board training staff meets quarterly with the Academy Directors and none has expressed concern regarding the additional training hours. The rulemaking also clarifies an existing practice that the Board-prescribed full-authority basic training course include an assessment of peace officer physical conditioning, vehicle and pursuit operations, and firearms use.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing the changes. The Board benefits and will have reduced costs from no longer having to train physicians to provide pre-appointment medical examinations. The Board will incur the cost of conducting on-site inspections to determine whether a basic training course is equipped to assess peace officer physical conditioning, vehicle and pursuit operations, and firearms use. Both the Board and Department benefit and will have reduced costs from deleting multiple unnecessary administrative requirements regarding the Department.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

        The Board and Department are state agencies directly affected by the rulemaking. Their impacts are discussed in item 4. The Board will not need additional full-time employees to implement or enforce the rule changes. The Board currently has 31 full-time employees, one part-time employee, and two attorneys assigned from the Office of the Arizona Attorney General.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions are directly affected by the rulemaking. This includes the political subdivisions[2] that operate training academies and those that appoint certified peace officers. Their benefits and costs are described in item 4.

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

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking has no direct effect on private or public employment. However, the Board believes the rulemaking may expand the pool of individuals qualified to pursue training as a peace officer.

7. Impact on small businesses[3]:

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

No small businesses, as defined at A.R.S. § 41-1001, are subject to this rulemaking.

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

- Agencies are required to ensure individuals appointed to an academy are qualified;
- Agencies are required to maintain and submit specified records and reports;
- Academies are required to ensure the basic training course provided meets the standards specified;
- Academies are required to meet the academic, administrative, and physical space standards specified;
- Academies are required to submit reports and participate in inspections;
- An individual is required to satisfy minimum qualification and training requirements to be certified as a peace officer. This includes meeting medical, physical, and mental requirements;
- An individual seeking appointment to an academy is required to undergo a background investigation;
- A certified peace officer is required to participate in annual training including firearms training;
- An individual seeking employment as a correctional officer is required to meet specified minimum standards including a background investigation and to complete a basic training course.

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

[2] A.R.S. § 41-1822(A)(4) provides that only this state and political subdivisions of this state may conduct basic peace officer training.

[3] Small business has the meaning specified in A.R.S. § 41-1001(23).

The rulemaking does not impact small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   The rulemaking does not directly affect private persons and consumers.

9. Probable effects on state revenues:

   The rulemaking has not effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

    The Board believes the rules are neither intrusive nor costly. They are the minimum possible to foster public trust and confidence by establishing and maintaining standards of integrity, competence, and professionalism for Arizona peace officers and correctional officers.

FW: Comment for Open Meeting 11-21-24

External

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Search for all messages with label Inbox
Remove label Inbox from this conversation

L

Lake, Amy E

Nov 20, 2024, 4:21 PM (2 days ago)

to me

Hi Mike,

I apologize I will not be able to attend the meeting in person.

I would want to be sure this communication/concern from 2023 was shared in the Open Meeting scheduled for tomorrow 11-21-24 to those discussing the rule change in regards to the medical requirements under Rule 13-4-107 on page 12 of the document. :
On Fri, Jul 28, 2023 at 12:51 AM Lake, Amy E <Amy.Lake@bannerhealth.com> wrote:
Thank you for your quick response and for taking my call as well. As discussed, if AZ POST eliminated the need for physicians conducting AZPOST medical exams for peace officers to be **AZPOST board-trained** and/or did not require any sort of guidelines be followed that are supported by AZPOST when conducting these exams, I would not feel right if I did not vocalize some concerns. As I shared, in regards to your proposal to change to no longer have physicians needing to be **board-trained,** it would be worth discussing still requiring examining physicians conduct exams based on the guidelines in the “Medical Screening Manual for Arizona Law Enforcement personnel” and possibly in addition, physicians still being registered through AZPOST to be able to conduct them. As you know, peace officers are a safety sensitive position that require certain abilities & fitness to perform their duties safely for themselves, those around them and the public they serve. As you stated, there is no one currently sitting on the board that is medical and it makes it very difficult to field questions and concerns from a medical aspect in regards to a candidate that can create various liability issues for the board currently. Where the thought is that medical decisions may not sit in the hands of those currently sitting on the board, that is one thing, however the need to maintain integrity of the program & necessity of the current guidelines when conducting these exams should not be overlooked and should be provided continued support. The manual is roughly 270 pages which supplies necessary guidelines and research that supports the guidelines that assist physicians in making the best determinations when conducting these exams along with consistency amongst those conducting them. Similar standards/guidelines have been established and provided for fire fighter recruits, DOT/CDL drivers, numerous federal agency positions and a long list of other safety

sensitive roles. It would be unfortunate if our future officers safety and those they serve were possibly put at risk due to a lack of support, resources, or understanding. I have had the pleasure of working with all parties involved for more than 20 years and am passionate about the health and safety of those we serve. It is imperative to maintain standards, requirements, & guidelines for our first responders and those that conduct their medical exams. I appreciate your understanding and the attention you have provided in this matter and am grateful that you will be passing on the concerns to those that will be reviewing the changes that are being proposed.

I would also ask that this be shared as well:

The change to the medical requirements under Rule 13-4-107 on page 12 of the document should provide additional clarification:

Can you confirm that the deletion of terminology **"Board Trained"** Physician will allow any physician to now conduct the medical examination for peace officers? Also, does the new term "physician" restrict that to only those that are an MD or DO, or would this encompass PAs and NPs (Physician Assistant or Nurse Practitioner) as well? Since the past **board training** for physicians held them to conduct their exams following the guidelines in the "Medical Screening Manual for Arizona Law Enforcement" personnel, will there be terminology added to the rule to be sure that physicians conducting peace officer medical exams continue to conduct exams based on those guidelines to ensure consistency, thoroughness and fairness under the new ruling for those being evaluated and those conducting the exam? We want to be sure this is not being overlooked under the new ruling since the guidelines were taught as part of the board training in the past.

I truly appreciate your time and attention and please let me know if you need anything else.

Thank you and Have a Great Day!
Amy Lake
Supervisor- Physician Practice
(Case Management Team)
Banner Occupational Health
Amy.Lake@bannerhealth.com
480-543-2693

"Each Day Is an Opportunity to Accomplish Something We Didn't Get to Yesterday"…me

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

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, 2022 through December 31, 2022

Questions about these rules? Contact:

Department: AZPOST
Address: 2643 E. University Dr.
Phoenix, AZ 85034
Website: www.azpost.gov
Name: Michael Giammarino, Program Administrator
Telephone: (602) 223-2514
Email: mikeg@azpost.gov

The release of this Chapter in Supp. 22-4 replaces Supp. 22-2, 1-20 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.

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TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

Authority: A.R.S. § 41-1822(A) et seq.

Supp. 22-4

The Arizona Law Enforcement Officer Advisory Council's name was changed by Laws 1994, Ch. 324, § 1, effective July 17, 1994. All references to the Council were changed to reflect the new Board. (Supp. 94-3).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS

New Article 1 consisting of Sections R13-4-101 through R13-4-118 adopted effective March 23, 1989.

Former Article 1 consisting of Sections R13-4-01 through R13-4-08 repealed effective March 23, 1989.

ARTICLE 2. CORRECTIONAL OFFICERS

Article 2, consisting of Sections R13-4-201 through R13-4-208, adopted effective December 16, 1992, filed June 16, 1992 (Supp. 92-2).

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

"Academy" means an entity that conducts the Board-prescribed basic training courses for full-authority or specialty peace officers.

"Adderall," as used in R13-4-105, means a combination drug containing salts of amphetamine that acts as a central nervous system stimulant. The combination may include amphetamine, methamphetamine, methylphenidate, dextroamphetamine, levoamphetamine, or other stimulants.

"Agency" means a law enforcement entity empowered by the state of Arizona.

"Appointment" means the selection by an agency of an individual to be a peace officer or peace officer trainee.

"Approved training program" means a course of instruction that meets Board-prescribed course requirements.

"Board" means the Arizona Peace Officer Standards and Training Board.

"Board-trained physician" means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

"Cancellation" means the annulment of certified status without prejudice to reapply for certification.

"Certified" means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

"CFE" means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the Board approved full-authority peace officer basic training course.

"Denial" means the refusal of the Board to grant certified status. The Board's denial may be temporary with an opportunity to reapply for certified status or permanent.

"Dangerous drug or narcotic" means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

"Full-authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

"Illegal" means in violation of federal or state statute, rule, or regulation.

"Lapse" means the expiration of certified status.

"Open enrollee" means an individual who is admitted to an academy but is not appointed by an agency.

"Peace officer" has the meaning in A.R.S. § 1-215.

"Peace officer trainee" means an individual recruited and appointed by an agency to attend an academy.

"Physician" means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

"Resolve-in-the-future or RF" means a designation assigned by the Board regarding alleged misconduct of an inactive peace officer and requires an agency to resolve the alleged misconduct before the agency may appoint the peace officer.

"Restriction" means the Board's limitation on duties allowed to be performed by a certified peace officer.

"Revocation" means the permanent withdrawal of certified status.

"Service ammunition" means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

"Service handgun" means the specific handgun or equivalent that a peace officer carries for use on duty.

"Specialty peace officer" means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or *Arizona Administrative Code*, as specified by the appointing agency's statutory powers and duties.

"Success criteria" means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

"Suspension" means the temporary withdrawal of certified status.

"Termination" means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

"Vendor" means an entity other than the Board or an agency that makes training available to peace officers.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R13-4-102. Internal Organization and Control of the Board

A. Scheduled meetings. The Chair, in consultation with the Board, shall set regular meeting dates of the Board.

B. Special meetings. Except in the case of an emergency meeting declared by the Governor or the Chair, the Chair shall give at least five days' written notice of a special meeting to each member of the Board.

C. Subcommittees. The Chair may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the Chair.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. Sheriffs who are elected are exempt from the requirement of certified status.

C. An individual shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:
1. Full-authority peace officer, and
2. Specialty peace officer.

E. Application for certification. An individual who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from the agency; and
3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed Peace Officer Basic Course.
1. If more than one year but less than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the CFE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
2. If more than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course, an open enrollee shall again graduate from the Board-prescribed Peace Officer Basic Course before obtaining an appointment from an agency.

G. Establishing or enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

H. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-104. Peace Officer Category Restrictions

A. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.

B. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:
1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under R13-4-110(A).

C. Reinstatement by an agency following termination by the agency for misconduct and physical separation from the agency for more than 30 days. Before reinstating a peace officer who was terminated for misconduct and physically separated from service for more than 30 days, the agency shall conduct the following background investigation and submit the results to the Board. The agency shall conduct the background investigation even if the peace officer's official date of reinstatement is within the 30 days of physical separation from the agency:
1. A personal history statement as described in R13-4-106(A);
2. A background interview regarding the time physically separated from the agency;
3. A polygraph examination as described in R13-4-106(C)(8) regarding the time physically separated from the agency and including:
   a. Were you involved in any criminal activity while physically separated from the agency;
   b. Did you have an encounter with law enforcement while physically separated from the agency;
   c. Was there a change in your medical condition while physically separated from the agency;
   d. Questions to update the information required under R13-4-105(A)(6) and (A)(9) through (15) and R13-4-106(C)(2) and (C)(4); and
   e. Is all the information you provided true, complete, and accurate.

D. Inactive status. Certified status of a peace officer becomes inactive upon termination.

E. Lapse of certified status. The certified status of a peace officer lapses after three consecutive years on inactive status.

F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:
1. In the same peace officer category, or;
2. As a specialty peace officer from inactive status as a full-authority peace officer.

G. Active status as a specialty peace officer does not prevent lapse of certified status as a full-authority peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final

rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-105. Minimum Qualifications

A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:

1. Be a United States citizen;
2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;
3. Meet one of the following education standards:
   a. Have a diploma from a high school recognized by the department of education of the jurisdiction from which the diploma is issued,
   b. Have successfully completed a General Education Development (G.E.D.) examination,
   c. Have a homeschool diploma or certificate of completion that is recognized as the equivalent of a high school diploma by the jurisdiction from which the homeschool diploma or certificate is issued,
   d. Have a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual received the equivalent of a high school education, or
   e. Have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;
4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual shall not begin an academy until the agency has completed the background investigation requirements at R13-4-106(C)(1), (C)(2), and (C)(4) through (9). However, an individual may begin an academy before the results of the fingerprint query referenced in R13-4-106(C)(3) are returned. The academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report, as specified in R13-4-106(C)(9), is completed;
5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating that the individual's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
9. Not have illegally, as defined in R13-4-101, possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
10. Not have illegally, as defined in R13-4-101, possessed or used marijuana for any purpose within the past two years;
11. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
12. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
13. Not have a pattern of abuse of prescription medication;
14. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
15. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
16. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.

B. To determine whether an individual's possession or use of marijuana, or a dangerous drug or narcotic disqualifies the individual from being appointed or attending an academy, the Board shall use the following standards:

1. Marijuana.
   a. All forms of marijuana, including THC extracts, cannabis, hashish, marijuana extracts, and marijuana edibles, and all forms of use will be treated the same;
   b. The individual has not illegally possessed or used marijuana within the two years before appointment as a peace officer; and
   c. The individual has never illegally possessed or used marijuana as a peace officer;
2. Dangerous drugs, hallucinogens, narcotics, and prescription drugs containing an active ingredient that is a narcotic or dangerous drug.
   a. The individual has not illegally possessed or used any of these substances:
      i. Within the seven years before appointment as a peace officer;
      ii. More than a total of five times for all substances combined;
      iii. More than one time for all substances combined since turning 21 years of age; and
      iv. As a peace officer;
   b. Dangerous drugs. All dangerous drugs, including methamphetamine, amphetamine, speed, spice, and bath salts will be treated the same;
   c. Hallucinogens. All hallucinogens, including peyote, mushrooms, ecstasy, lysergic acid diethylamide (LSD), ketamine, mescaline, and phencyclidine (PCP) will be treated the same;
   d. Narcotics. All narcotics, including cocaine, heroin, and opioids will be treated the same; and
   e. Prescription medications. All prescription medications containing an active ingredient that is a narcotic or dangerous drug will be treated the same. Possession or use for recreational purposes of a prescription medication containing an active ingredient that is a narcotic or dangerous drug is disqualifying under subsection (B)(2);
3. Steroids.
   a. All steroids, including anabolic-androgenic steroids and corticosteroids will be treated the same;

b. The individual has not illegally possessed or used a steroid within the three years before appointment as a peace officer; and
c. The individual has never illegally possessed or used a steroid as a peace officer;

4. Adderall.
a. All uses of Adderall, except as prescribed by a physician, will be treated the same;
b. The individual has not possessed or used Adderall, except as prescribed by a physician, within the three years before appointment as a peace officer, and
c. The individual has never possessed or used Adderall, except as prescribed by a physician, as a peace officer; and

5. Over-the counter products containing cannabidiol (CBD). The Board does not consider possession or use of over-the-counter products containing CBD, as allowed under federal and state law, as disqualifying an individual from appointment as a peace officer.

C. An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is determined to be disqualifying under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use should not be disqualifying. The petition shall:

1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
a. The duration of possession or use,
b. The motivation for possession or use,
c. The time elapsed since the last possession or use,
d. How the drug was obtained,
e. How the drug was ingested,
f. Why the individual stopped possessing or using the drug, and
g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:

1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
a. The conduct occurred when the individual was younger than age 18;
b. The conduct occurred more than 10 years before application for appointment;
c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
d. There is reason to believe that the individual's immaturity at the time of the conduct contributed substantially to the conduct;
e. There is evidence that the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.

3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.

E. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

F. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-106. Background Investigation Requirements

A. Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency

a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure that the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.

B. Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:

1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
3. Record of any military discharge. A copy of the Military Service Record (DD Form 214 or NGB Form 22), which documents the character of service, separation code, and reentry code, is acceptable proof.
4. Personal references. The names and addresses of at least three people who can provide information as personal references.
5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
6. Residence history. The complete address for every location at which the individual has lived in the last five years.

C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:

1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (6);
2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (6);
3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (6);
5. Contact all personal references and employers listed in subsections (B)(4) and (5) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
6. Query the Board regarding the individual's certification status, reports of alleged misconduct by the individual, and whether the individual has a Board case with an RF designation;
7. Query all Arizona law enforcement agencies where the individual was appointed or applied for appointment as a peace officer regarding records maintained under R13-4-108(C);
8. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern:
   a. Minimum standards for appointment as required by R13-4-105,
   b. Truthfulness on the personal history statement,
   c. Commission of any crimes; and
   d. Any Board case with an RF designation;
9. If any of the information under subsections (C)(1) through (8) is more than a year old, the agency shall administer another polygraph examination and query the individual regarding any changes in the information previously received under subsections (C)(1) through (8); and
10. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings. If the agency is unable to obtain all information required under subsections (C)(1) through (9), include in the report a description of the missing information and efforts made to obtain it.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-107. Medical Requirements

A. Medical, physical, and mental eligibility for certification.

1. An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
2. If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.

B. Medical examination process.

1. Medical history. An individual applying to be appointed shall provide to the examining, board-trained, physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
2. Medical examination.
   a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;

b. The examining, board-trained, physician shall review the medical history statement and take an additional verbal history from the applicant;
c. The examining, board-trained, physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
d. The examining, board-trained, physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
e. The examining, board-trained, physician shall make a report to the agency and provide a:
i. Summary of the examination;
ii. Description of any significant medical findings;
iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer; and
iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and
f. The examining, board-trained, physician shall consult with the agency, upon request, about the report and the efficacy of any accommodations the agency deems reasonable.

C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-108. Agency Records and Reports

A. Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
a. The nature of the termination and effective date;
b. A detailed description of any termination for cause; and
c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.

B. Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;
2. A copy of reports submitted under subsection (A);
3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106, including information obtained regarding a Board case with an RF designation;
5. A completed medical report required under R13-4-107; and
6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.

C. Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training; and
3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.

D. An agency shall make the records maintained under subsection (C) available, on request, to another agency completing a background investigation under R13-4-106(C).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
2. Willfully providing false information in connection with obtaining or reactivating certified status;
3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
5. Engaging in behavior that would be disqualifying under R13-4-105(B);
6. Using or being under the influence of spirituous liquor on duty without authorization;
7. Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
8. Committing malfeasance, misfeasance, or nonfeasance in office;
9. Performing the duties or exercising the authority of a peace officer without having active certified status;

10. Making a false or misleading statement, written or oral, to the Board or its representative;
11. Failing to furnish information in a timely manner to the Board or its representative on request; or
12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.

B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).

C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.

D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.

E. Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.

F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

A. Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.
1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. At the public meeting, the Board shall determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
2. The Board shall leave a restriction in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
3. The Board shall provide notice of restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.

B. Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.

C. Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:
1. To be certified as a full-authority peace officer, an individual shall complete the Board approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
   a. The Board shall ensure the CFE is administered in a secure manner.
   b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
   c. An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
   d. An individual who fails one or more blocks of the CFE may retake the failed block one time before the individual is scheduled to graduate from the academy.
   e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.
   f. An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the Board approved full-authority peace officer basic training course.
   g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
2. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the Board approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a:
1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or

2. Field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.

C. Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.

D. Waiver of required training.

1. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if:
   a. The individual's certified status is lapsed;
   b. The individual has functioned in the capacity of a peace officer in another state, graduated from a Peace Officer Standards and Training Academy, and worked for at least one year as a peace officer; or
   c. The individual graduated from a federal law enforcement academy and worked for at least one year as a law enforcement officer.
2. The Board shall review the application and grant a waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:
   a. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
   b. The individual meets the minimum qualifications listed in R13-4-105;
   c. The individual complies with the requirements of R13-4-103(E)(1);
   d. The appointing agency complies with the requirements of R13-4-106(C);
   e. The individual successfully completes an examination measuring the individual's comprehension of the Board approved full-authority peace officer basic training course as follows:
      i. If the individual has experience as a certified peace officer in another state or for a federal law enforcement agency and submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's Board approved full-authority peace officer basic training course, the individual shall pass all blocks of the CFE; and
      ii. If the individual's certification is lapsed, the individual shall pass all blocks of the CFE; and
      iii. The provisions in subsections (A)(1)(a), (c), and (e) through (g) apply to this subsection; and
   f. In addition to the examination required under subsection (D)(5), the individual demonstrates proficiency in the areas of physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-111. Certification Retention Requirements

A. Training required.

1. A full-authority or specialty peace officer shall complete 12 hours of training each year beginning January 1 following the date the officer is certified.
2. Training course standards for peace officers. The provider of a training course for peace officers shall ensure that:
   a. The course curriculum consists of instruction on topics related to law enforcement operations and peace officer functions and skills;
   b. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
   c. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit; and
   d. If an agency wishes to host a vendor-provided training course:
      i. Both the agency and vendor shall comply with the provisions of subsection (A)(2); and
      ii. The agency shall provide the statement described under subsection (A)(2)(b).
3. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(b). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Firearms qualification required. In addition to the training required under subsection (A), a peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.

1. Firearms qualification course standards.
   a. A firearms qualification course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms qualification course shall ensure that the course includes:
      i. A timed accuracy component;

ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

2. Firearms target identification and judgment course standards.
a. A firearms target identification and judgment course is a course:
i. Prescribed under R13-4-116(E)(1), or
ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
i. A timed accuracy component;
ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 3431 (October 28, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 5, 2022, effective December 6, 2022 (Supp. 22-4).

R13-4-112. Time Frames

A. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for peace officer certification:
1. Administrative completeness review time frame: 90 days.
2. Substantive review time frame: 180 days.
3. Overall time frame: 270 days.

B. The administrative completeness review time frame begins on the date the Board receives the report required by R13-4-108(A)(1) from an appointing agency.
1. Within 90 days, the Board shall review the report and issue to the appointing agency a notice of administrative completeness or a notice of administrative deficiency that lists each document or item of information establishing compliance with R13-4-105 that is missing.
2. If the Board issues a notice of administrative deficiency, the appointing agency shall make the missing documents and information available to the Board within 90 days of the date of the notice. The administrative completeness review time frame is suspended from the date of the deficiency notice until the date the missing documents and information are made available to the Board.
3. If the appointing agency fails to make available all missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the appointing agency.

C. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
2. The appointing agency shall make available to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the additional information is made available to the Board.
3. If the appointing agency fails to make available the additional information requested within the 60 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the substantive review is complete, the Board shall grant or deny certification.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Adopted effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-113. Repealed

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Reference to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.

1. Instructor classifications.
   a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
   b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
   c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-116(E)(1)(h).
2. Instructor qualification standards.
   a. A general instructor shall meet the following requirements:
      i. Have two years' experience as a certified peace officer;
      ii. Maintain instructional competency; and
      iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course.
   b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or (A)(2)(b)(iv):
      i. Be nominated by the administrator of an academy authorized to provide a peace officer basic training course;
      ii. Maintain instructional competency;
      iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught; and
      iv. Provide documentation to the academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field.
   c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
      i. Meet the requirements for general instructor;
      ii. Maintain instructional competency;
      iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-116(E)(1)(h) that includes a competency assessment to instruct in that area within the full-authority peace officer basic training course listed in R13-4-116(E); and
      iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the full-authority peace officer basic training course listed in R13-4-116(E).
   d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-116(E)(1)(h) for which the proficiency instructor seeks qualification.
3. Instructional competency. An academy administrator shall immediately notify the Board in writing of any instructor:
   a. Who jeopardizes the safety of students or the public,
   b. Whose instruction violates acceptable training standards,
   c. Who is grossly deficient in performance as an instructor, or
   d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the full-authority peace officer basic training course.
4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.

B. Curriculum standards. An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:
1. Curriculum.
   a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
   b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
2. Curriculum format standard. The curriculum consists of the following:
   a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
   b. Lesson plans containing:
      i. Course title,
      ii. Hours of instruction,
      iii. Materials and aids to be used,
      iv. Instructional strategy,
      v. Topic areas in outline form,
      vi. Performance objectives or learning activities,
      vii. Success criteria, and
      viii. Reference material;
   c. Performance objectives consisting of at least the following components:
      i. The student, which is an individual or group that performs a behavior as the result of instruction;
      ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
      iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
   d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
      i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or

ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and

e. The following decimal numbering system to provide a logical means of organization:
i. Functional area (1.0, 2.0, 3.0),
ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).

C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 3431 (October 28, 2022), effective December 4, 2022 (Supp. 22-4).

R13-4-115. Repealed

Historical Note
Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-116. Academy Requirements

A. Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.

B. The academy administrator shall ensure that the academy has the following:
1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
2. Chairs with tables or arms for writing;
3. Visual aid devices for classroom presentation;
4. Equipment in good condition for specialized instruction;
5. A safe driving range for conducting the defensive and pursuit driving course;
6. A firing range with adequate backstop to ensure the safety of all individuals on or near the range; and
7. A safe location for practical exercises.

C. Administrative requirements. The academy administrator shall ensure that the academy:
1. Establishes and maintains written policies, procedures, and rules concerning:
a. Operation of the academy,
b. Entrance requirements,
c. Student and instructor conduct, and
d. Administering examinations;
2. Admits only individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on form A1 or A4, as applicable, which is submitted to the Board on or before the first day of training;
3. Administers to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
4. Schedules sufficient time for the CFE to be administered as required by R13-4-110(A); and
5. Uses only instructors who are qualified under R13-4-114(A).

D. Academic requirements. The academy administrator shall ensure that the academy:
1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
4. Reviews examination results with each student and ensures that the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
5. Requires a student to complete successfully oral or written examinations that cover all topics in all functional areas before graduating.
a. Successful completion of an examination is a score of 70 percent or greater;
b. For a student who scores less than 70 percent, the academy shall:
i. Provide remedial training, and
ii. Re-examine the student in the area of deficiency; and
c. The academy shall allow a student to retake each examination only once;
6. Requires a student to qualify with firearms as described in R13-4-116(E);
7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);
8. Provides remedial training for a student who misses a class before allowing the student to graduate; and
9. Refuses to graduate a student who is absent more than 32 hours from the Board approved full-authority peace officer basic training course or 16 hours from the specialty peace officer basic training course.

E. Basic course requirements. The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.
1. The Board approved full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:
a. Functional Area I - Introduction to Law Enforcement.
i. Criminal justice systems,
ii. History of law enforcement,
iii. Law enforcement services,
iv. Supervision and management,
v. Ethics and professionalism, and
vi. Stress management.
b. Functional Area II - Law and Legal Matters.
i. Introduction to criminal law;
ii. Laws of arrest;
iii. Search and seizure;

iv. Rules of evidence;
v. Summonses, subpoenas, and warrants;
vi. Civil process;
vii. Administration of criminal justice;
viii. Juvenile law and procedures;
ix. Courtroom demeanor;
x. Constitutional law;
xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
xii. Liability issues.

c. Functional Area III - Patrol Procedures.
i. Patrol and observation (part 1),
ii. Patrol and observation (part 2),
iii. Domestic violence,
iv. Behavioral health crisis response,
v. Crimes in progress,
vi. Crowd control formations and tactics,
vii. Bomb threats and disaster training,
viii. Intoxication cases,
ix. Communication and police information systems,
x. Hazardous materials,
xi. Bias-motivated crimes,
xii. Fires, and
xiii. Civil Disputes.

d. Functional Area IV - Traffic Control.
i. Impaired driver cases;
ii. Traffic citations;
iii. Traffic collision investigation;
iv. Traffic collision (practical);
v. Traffic direction; and
vi. Substantive Traffic Law, A.R.S. Title 28.

e. Functional Area V - Crime Scene Management.
i. Preliminary investigation and crime scene management,
ii. Crime scene investigation (practical),
iii. Physical evidence procedures,
iv. Interviewing and questioning,
v. Fingerprinting,
vi. Sex crimes investigations,
vii. Death investigations including sudden infant death syndrome,
viii. Organized crime activity,
ix. Investigation of specific crimes, and
x. Narcotics and dangerous drugs.

f. Functional Area VI - Community and Police Relations.
i. Cultural awareness,
ii. Victimology,
iii. Interpersonal communications,
iv. Crime prevention, and
v. Police and the community.

g. Functional Area VII - Records and Reports. Report writing.

h. Functional Area VIII - Police Proficiency Skills.
i. First aid,
ii. Less lethal operations (including certification),
iii. Firearms training (including firearms qualification),
iv. Physical conditioning,
v. High-risk stops,
vi. Arrest and control tactics,
vii. Vehicle operations, and
viii. Pursuit operations.

i. Functional Area IX - Orientation and Introduction.
i. Examinations and reviews,
ii. Counseling, and
iii. Non-Board specified courses.

2. The specialty peace officer basic training course shall include all of the topics necessary from the Board approved full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
3. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).

F. Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
2. A manual containing the policies, procedures, and rules of the academy;
3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;
4. A copy of all lesson plans used by instructors;
5. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
6. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
7. An attendance roster for all classes or other record that identifies absent students;
8. A record of classes missed by each student and the remedial training received;
9. A record of disciplinary actions for all students; and
10. A file for each student containing the student's performance history.

G. Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
4. No later than the tenth day of each month, a report containing:
a. A summary of training activities and progress of the academy class to date;
b. Unusual occurrences, accidents, or liability issues; and
c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;

6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.

H. Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.

1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.

J. If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.

K. An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-117. Training Expense Reimbursements

A. Approval of training courses. The Board shall approve or deny training courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds.

B. Application for reimbursement. Before the beginning of a training program described in R13-4-111, an agency planning to participate in the training and apply for reimbursement, shall notify the Board on prescribed forms.

C. Claim for reimbursement. When an individual completes a training course, the appointing agency may submit a claim for reimbursement on a form prescribed by the Board. The agency shall submit the claim within 60 days after the training is completed.

D. Allowable reimbursements. The Board shall allow the following reimbursements subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):

1. The state-approved rate for lodging while a peace officer attended a training course,
2. Tuition for a training course on a pro-rata basis for the actual hours of training attended, and
3. Other expenses incurred by a peace officer.

E. Limitations on reimbursements. The following limitations apply to applications for reimbursement involving training courses.

1. The Board shall not reimburse an agency if the peace officer has previously completed the same training course within three years;
2. The Board shall not reimburse an agency for a peace officer who fails to complete a training course except upon request of the appointing agency. The agency shall present the reasons for the non-completion to the Board with the request for reimbursement; and
3. The Board shall not reimburse an agency for the cost of insurance, medical, pension, uniform, clothing, equipment, or other benefits or expenses of a peace officer while attending a training course.

F. Academy reimbursement. The Board may reimburse an academy for the actual costs of materials, books, ammunition, registration fees and tuition, necessary for completion of a basic course up to the limits set by the Board. To receive reimbursement, an academy shall furnish paid receipts or invoices or other information as required by the Board to verify costs incurred. The Board shall not reimburse an academy for costs incurred for registration fees, tuition, books, materials, or ammunition for a peace officer, if the Board has made these reimbursements for the peace officer's previous attendance at an academy.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-118. Hearings; Rehearings

A. If a respondent makes a request for hearing under R13-4-109(E), the hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 10.

B. If a respondent fails to comply with the requirements under R13-4-109(E) within 30 days of the notice of action sent under R13-4-109(E), the Board may consider the case based on the information available.

C. If a respondent requests a hearing, but fails to appear at the hearing, the Board or administrative law judge may vacate the hearing. If a hearing is vacated, the Board may deem the acts and violations charged in the notice of action admitted, and impose any of the sanctions provided by A.R.S. § 41-1822 (D)(1).

D. The Board shall render a decision in writing. The Board shall serve notice of the decision on each party as required by A.R.S. § 41-1092.04.

E. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.

F. A party may file a motion for rehearing or review of a decision with the Board not later than 30 days after service of the Board's decision, specifying the particular grounds for the motion.

G. The Board may grant a rehearing or review of a decision for any of the following reasons materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings, or any abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, the administrative law judge, or the prevailing party;
3. Mistake or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
6. The decision was not justified by the evidence or the decision was contrary to law.

H. The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on part or all of the issues, for any of the reasons in subsection (G). An order granting a rehearing shall specify the particular issues in the rehearing and the rehearing shall concern only the matters specified.

I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

ARTICLE 2. CORRECTIONAL OFFICERS

R13-4-201. Definitions

The definitions in A.R.S. § 41-1661 apply to this Article. Additionally, unless the context otherwise requires:

"Academy" means the Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections in Tucson, Arizona, or a satellite location authorized by the Director.

"Appointment" means the selection of an individual as a correctional officer.

"Applicant" means an individual who applies to be a correctional officer.

"Cadet" means an individual who is attending the academy and, upon graduation, will become a state correctional officer.

"Dangerous drug or narcotic" is defined in R13-4-101.

"Department" means the Arizona Department of Corrections.

"State correctional officer" means an individual employed by the Department in the correctional officer series.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" and definitions relabeled accordingly (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-202. Uniform Minimum Standards

A. To be admitted to the academy for training as a state correctional officer, an individual shall:

1. Be a citizen of the United States or eligible to work in the United States;
2. Be at least 18 years of age by the date of graduation from the academy;
3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);
4. Have a valid Arizona driver's license (Class 2 or higher) by the date of graduation from the academy;
5. Undergo a complete background investigation that meets the standards of R13-4-203;
6. Undergo a physical examination (within 12 months before appointment) as prescribed by the Director by a licensed physician designated by the Director;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have used a dangerous drug or narcotic, as defined at A.R.S. § 13-3401, within the past five years;
9. Not have a pattern of abuse of prescription medication; and
10. Not have committed a felony or a misdemeanor of a nature that the Board determines has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).

B. If the Director wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109, the Director may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion by complying with R13-4-105(D).

C. Code of Ethics. To enhance the quality of performance and the conduct and the behavior of correctional officers, an individual appointed to be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the Code:

"I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing that I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the Constitutions of the United States and the state of Arizona, and all federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior that could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation that could lead any person to expect official favors. I shall not accept or solicit from anyone, either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, that is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national origin. I will not sexually harass or condone sexual harassment of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona."

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by exempt rulemaking, under Laws 2019, Chapter 93, at 25 A.A.R. 1267, with an immediate effective date of April 24, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-203. Background Investigation

A. The Department shall conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted under subsection (B) and the results of the background investigation required in subsection (C) to determine whether the individual meets the requirements of R13-4-202 and the individual's personal history statement is accurate and truthful.

B. Personal history. An applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the Board. The applicant shall complete the personal history statement before the start of the background investigation and ensure that the personal history statement provides the information necessary for the Department to conduct the investigation described in subsection (C).

C. Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and retain documents establishing that the applicant meets the standards specified in this Article. At a minimum, this documentation shall include:

1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of any of the following regarding the applicant is acceptable proof:
   a. Birth certificate,
   b. United States passport,
   c. Certification of United States Naturalization,
   d. Certificate of Nationality, or
   e. Immigration Form I-151 or I-1551.
2. Proof of the applicant's valid driver's license. A copy of the applicant's driver's license and written verification of the applicant's driving record from the applicable state's Department of Transportation, Motor Vehicle Division, is required proof.
3. Proof that the applicant is a high school graduate or its equivalent. The following are acceptable proof:
   a. A copy of a diploma from a high school recognized by the department of education of the jurisdiction in which the diploma is issued;
   b. A copy of a certificate showing successful completion of the General Education Development (G.E.D.) test; or
   c. In the absence of proof of high school graduation or successful completion of the G.E.D. test,
      i. A copy of a degree or transcript from an accredited college or university showing successful completion of high school or high school equivalency;
      ii. A United States Military Service Record DD Form 214-#4 with the Education block indicating high school completion,
      iii. A copy of a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual named received the equivalent of a high school education; or
      iv. Other evidence of high school education equivalency submitted to the Board for consideration.
4. Record of any military discharge. A copy of the Military Service Record (DD Form 214-#4 or NGB Form 22), which documents the character of service, separation code, and reentry code, is acceptable proof.
5. Results of a psychological fitness assessment approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.
6. Personal references: The names and addresses of at least three individuals who can provide information regarding the applicant.
7. Previous employers or schools attended. The names and addresses of all employers of and schools attended by the applicant for the past five years.
8. Residence history. The complete address for every location at which the applicant has lived in the last five years.
9. Law enforcement agency records. The Department shall request and review law enforcement agency records in jurisdictions where the applicant has lived, worked, or attended school in the past five years. The Department shall document the information obtained.
10. Criminal history query. The Department shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review the criminal history record for any

arrest or conviction to determine compliance with R13-4-202.

11. Fingerprint card. The Department shall obtain from an applicant and submit a fingerprint card for processing by the Arizona Department of Public Safety and the Federal Bureau of Investigation.
    a. The Department shall process a fingerprint card for an applicant entering the academy, except as provided in subsections (C)(9)(b) and (c). The Department shall process a fingerprint card for an applicant even if the applicant has a processed applicant fingerprint card from a previous employer.
    b. If the fingerprint card is not fully processed when the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy if:
        i. A computerized criminal history check has been made and the results are on file with the Department, and
        ii. The applicant meets all other requirements of this Section and R13-4-202.
    c. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of admission to the academy, the individual does not meet the requirements of this Section and may be terminated from the academy. The Department may extend the deadline for receipt of a processed fingerprint card an additional 15 weeks. An individual terminated from the academy under this subsection may be re-employed under R13-4-208 when a fully processed fingerprint card is received.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-204. Records and Reports

A. Reports. The Department shall submit to the Board a report by the Director attesting that each individual completing the academy meets the requirements of R13-4-202.

B. Records. The Department shall make Department records available to the Board upon request of the Board or its staff. The Department shall keep the records in a central location. The Department shall maintain:
1. A copy of reports submitted under subsection (A);
2. All written documentation obtained or recorded under R13-4-202 and R13-4-203; and
3. A record of all advanced training, specialized training, continuing education, and firearms qualification conducted under R13-4-206.

C. Record retention. The Department shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-203 who are not appointed: two years; and
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(3), shall be retained for three years.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-205. Basic Training Requirements

A. Required training for state correctional officers. Before appointment as a state correctional officer, an individual shall complete a Board-approved basic correctional officer training program. This program shall meet or exceed the requirements of this Section.

B. Curricula or training material approval time frames.
1. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for curricula or training material that require Board approval under this Section and R13-4-206.
    a. Administrative completeness time frame: 60 days.
    b. Substantive review time frame: 60 days.
    c. Overall time frame: 120 days.
2. The administrative completeness review time frame begins on the date the Board receives the documents required by this Section or R13-4-206.
    a. Within 60 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.
    b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness time frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
    c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.
    d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the Department.
3. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
    a. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
    b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
    c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.
    d. When the substantive review is complete, the Board shall grant or deny approval.

C. Basic course specifications.
1. The Department shall develop the curriculum for the basic correctional officer training program.
    a. The curriculum shall include courses in the following functional areas.

i. Functional Area I - Ethics and Professionalism;
ii. Functional Area II - Inmate Management;
iii. Functional Area III - Legal Issues;
iv. Functional Area IV - Communication Skills;
v. Functional Area V - Officer Safety, including firearms;
vi. Functional Area VI - Applied Skills;
vii. Functional Area VII - Security, Custody, and Control;
viii. Functional Area VIII - Conflict and Crisis Management; and
ix. Functional Area IX - Medical Emergencies, and Physical and Mental Health.

b. The curriculum shall also contain administrative time for orientation, counseling, testing, and remedial training.

2. The Department shall ensure that curriculum submitted to the Board for approval contains lesson plans that include:
a. Course title,
b. Hours of instruction,
c. Materials and aids to be used,
d. Instructional strategy,
e. Topic areas in outline form,
f. Success criteria, and
g. The performance objectives or learning activities to be achieved.

3. After initial approval by the Board, the Director or the Director's designee shall:
a. Annually review each lesson plan submitted to and approved by the Board under subsection (C)(2); and
b. If an approved lesson plan has been changed, submit the changed lesson plan to the Board for approval; or
c. If an approved lesson plan has not been changed, sign and date an acknowledgment of approval for each lesson plan.

4. The Department shall ensure that the following three components are specified for each performance objective:
a. The learner, which is an individual or group that performs a behavior as the result of instruction;
b. The behavior, which is an observable demonstration by the learner at the end of instruction that shows that the objective is achieved and allows evaluation of the learner's capabilities relative to the behavior;
c. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner will perform the stated behavior. Unless specified otherwise, the instruction and evaluation shall be in written or oral form.

5. The Department shall ensure that instructors of basic correctional officer training courses meet proficiency requirements developed by the Department and approved by the Board. The Department shall ensure that proficiency requirements for instructors include education, experience, or a combination of both. The Department shall affirm to the Board that each instructor has the necessary qualifications before the instructor delivers any instruction. In addition to these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall complete specialized training developed by the Department and approved by the Board. Instructors shall use lesson plans described in subsection (C)(2).

D. Academic requirements.

1. A cadet shall be given a combination of written, oral, or practical demonstration examinations capable of measuring the cadet's attainment of the performance objectives in each approved lesson plan.
2. Academy staff shall review examination results and academic progress with each cadet weekly. Academy staff shall ensure that each cadet is informed of correct responses.
3. A cadet shall complete all examinations before graduating from the academy. To successfully complete a written or oral examination, a cadet shall score at least 70 percent.
a. If a cadet receives a score of less than 70 percent, the academy shall provide the cadet with remedial training in areas of deficiency.
b. The academy shall not offer a cadet more than one re-examination per lesson plan.
4. A cadet shall qualify with firearms as specified in subsection (C). Firearms qualification shall include:
a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;
b. Seven-shot qualification course with service shotgun; and
c. Target identification and discrimination course.
5. A cadet shall meet success criteria described in the Board-approved curriculum for the proficiency skills of self-defense, physical conditioning, and medical emergencies, as approved under R13-4-205(C).
6. The academy shall provide a cadet who does not attend a lesson with remedial training before graduation.
7. The academy shall not graduate a cadet who attends less than 90 percent of the total hours of basic training.

E. Exceptions. A cadet shall not function as a state correctional officer except:
1. As a part of an exercise within the approved basic training program, if the cadet is under the direct supervision and control of a state correctional officer; or
2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to, riots, insurrections, and natural disasters. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of R13-4-205(D)(4).

F. Waiver of required training. The Board shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if an applicant:
1. Successfully completes a basic corrections officer training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic correctional officer training course and has a minimum of one year of experience as a correctional officer. The applicant shall include verification of previous experience and training with the application for waiver;
2. Meets the minimum qualifications specified in R13-4-202; and
3. Successfully completes a comprehensive examination measuring comprehension of the basic correctional officer training course. The comprehensive examination shall be prepared by the Department, approved by the Board, and include a written test and practical demonstrations of

proficiency in firearms, physical conditioning, and defensive tactics.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-206. Field Training and Continuing Training Including Firearms Qualification

A. Field training requirement. Before graduating from the academy or within two months after graduation, a cadet or state correctional officer shall participate in and successfully complete a Board-approved field training program.

B. Continuing training requirement.
1. A state correctional officer shall receive eight hours of Board-approved continuing training each calendar year beginning January 1 following the date the officer received certified status.
2. In addition to the training required under subsection (B)(1), a state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1 following the date the officer received certified status. The firearms qualification training shall meet the standards specified under subsection (F) and shall not be used to satisfy the requirements of R13-4-206 (C).

C. Continuing training requirements may be fulfilled by:
1. Advanced training programs, or
2. Specialized training programs.

D. Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs that include courses enhancing a correctional officer's knowledge, skills, or abilities for the job that the correctional officer performs. The courses within an advanced training program shall include advanced or remedial training in any topic listed in R13-4-205(C).

E. Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs that address a particular need of the Department and target a select group of officers. The courses within a specialized training program shall include topics different from those in the basic corrections training program or any advanced training programs.

F. Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following the receipt of certified status by completing a Board-prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
   a. A firearms qualification course is:
      i. A course prescribed under R13-4-205(C); or
      ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).
   b. All firearms qualification courses shall include:
      i. A timed accuracy component;
      ii. A type and style of target that is equal to, or more difficult than, the targets used under R13-4-205(C); and
      iii. Success criteria that are equal to, or more difficult than, the success criteria used under R13-4-205(C).
2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is:
      i. A course prescribed under R13-4-205(C); or
      ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).
   b. All firearms target identification and judgment courses shall include:
      i. A timed accuracy component;
      ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and
      iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C),
3. All courses shall be presented by a firearms instructor who meets the requirements under R13-4-205(C)(5).

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-207. Repealed

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-208. Re-employment of State Correctional Officers

A. A state correctional officer who terminates employment may be re-employed by the Department within two years from the date of termination if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment.

B. A state correctional officer who terminates employment may be re-employed by the Department if re-employment is sought more than two years but less than three years from the original date of termination, if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment and completes the waiver provisions of R13-4-205(F).

C. A former state correctional officer who seeks re-employment more than three years from the date of termination shall meet all the requirements of this Article at the time of re-employment.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

As of March 11, 2024

41-1821. Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants

A. The Arizona peace officer standards and training board is established and consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one of whom is appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff who is appointed from a county having a population of less than two hundred thousand persons.

2. Two chiefs of police, one of whom is appointed from a city or federally recognized Native American tribe having a population of sixty thousand or more persons and the remaining chief who is appointed from a city or federally recognized Native American tribe having a population of less than sixty thousand persons.

3. A college faculty member in public administration or a related field.

4. The attorney general.

5. The director of the department of public safety.

6. The director of the state department of corrections.

7. One member who is employed in administering county or municipal correctional facilities.

8. Two certified law enforcement officers who have knowledge of and experience in representing peace officers in disciplinary cases, neither of whom serves in a supervisory capacity and both of whom must be from different law enforcement agencies. One of the appointed officers must be from a county with a population of less than five hundred thousand persons.

9. Two public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor 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.

C. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

D. Meetings shall be held at least quarterly or on the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

E. The term of each regular member is three years unless a member vacates the public office that qualified the member for this appointment.

F. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.

G. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by section 41-1825.

H. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

41-1822. Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of section 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to section 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.

7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board in accordance with the requirements of the law enforcement merit system council.

B. With respect to state department of corrections correctional officers, the board shall:

1. Approve a basic training curriculum of at least two hundred forty hours.

2. Establish uniform minimum standards. These standards shall include high school graduation or the equivalent and a physical examination as prescribed by the director of the state department of corrections.

3. Establish uniform standards for background investigations, including criminal histories under section 41-1750, of all applicants before enrolling in the academy. The board may adopt special procedures for extended screening and investigations in extraordinary cases to ensure suitability and adaptability to a career as a correctional officer.

4. Issue a certificate of completion to any state department of corrections correctional officer who satisfactorily complies with the minimum standards and completes the basic training program. The board may issue a certificate of completion to a state department of corrections correctional officer who has received comparable training in another state if the board determines that the training was at least equivalent to that provided by the academy and if the person complies with the minimum standards.

5. Establish continuing training requirements and approve curricula.

C. With respect to peace officer misconduct, the board may:

1. Receive complaints of peace officer misconduct from any person, request law enforcement agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Receive a complaint of peace officer misconduct from the president or chief executive officer of a board recognized law enforcement association that represents the interests of certified law enforcement officers if the association believes that a law enforcement agency refused to investigate or made findings that are contradictory to prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section. If the board finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of the qualifications

established pursuant to subsection A, paragraph 3 of this section, the board shall conduct an independent investigation to determine whether the officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section and provide a letter of the findings based on the investigation conducted by the board to the president or chief executive officer of the board recognized law enforcement association who made the complaint.

D. The board may:

1. Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Provide training and related services to assist state, tribal and local law enforcement agencies to better serve the public, including training for emergency alert notification systems.

3. Enter into contracts to carry out its powers and duties.

E. This section does not create a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation.

F. For the purposes of this section, "sexual orientation" means consensual homosexuality or heterosexuality.

41-1823. Adoption of minimum qualifications; certification required

A. No minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state pursuant to section 41-1031.

B. Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

41-1824. Training expenditures

In exercising its powers and duties, the board shall endeavor to minimize costs of administration, including utilization of training facilities already in existence and available, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

41-1825. Peace officers' training fund

A. A special fund designated as the peace officers' training fund is established. All monies deposited in the fund are continuously appropriated to the department of public safety for the benefit of the board. The monies shall be used exclusively for the costs of training peace officers, including Indian tribe police officers who are training to be qualified pursuant to section 13-3874 and full authority peace officers who are appointed by the director of the state department of corrections and the director of the department of juvenile corrections, for grants to state agencies, counties, cities and towns of this state for peace officer training and for expenses for the operation of the board. No peace officers' training fund monies may be spent for training correctional officers of the state department of corrections.

B. All amounts to be paid or advanced from the fund shall be on warrants drawn by the department of administration on presentation of a proper claim or voucher that is approved and signed by the executive director.

C. The executive director shall lawfully disburse monies as approved by the board.

D. The board may use and the department of public safety shall provide to the board administrative support services. The board shall reimburse the department for expenses incurred for administrative support services. This subsection does not require the department to provide administrative support services that are different in kind from those that were provided on January 1, 2000. For the purposes of this subsection, "administrative support services" includes all services relating to business office, finance and procurement, information management and technology, fleet, human resources, supply, telecommunications, facilities, security and clerical and administrative assistance personnel.

41-1826. Arizona law enforcement training academy; former property; title transfer

A. Notwithstanding any law to the contrary and for the benefit of the board, the department of public safety shall transfer to the state department of corrections the title to the property that was formerly known as the Arizona law enforcement training academy and that is operated as the correctional officer training academy in Tucson.

B. If at any time after title is transferred the state department of corrections leases or sells the property, the proceeds from the lease or sale shall be deposited, pursuant to sections 35-146 and 35-147, as follows:

1. 53.66 per cent of the proceeds or 53.66 per cent of the fair market value, whichever is greater, in the peace officers' training fund established by section 41-1825.

2. 46.34 per cent of the proceeds or 46.34 per cent of the fair market value, whichever is greater, in the state general fund.

41-1827. Application for grants

Any state agency, county, city or town which desires to receive a grant pursuant to section 41-1825 shall make application to the board for such aid. The application shall contain such information as the board may request.

41-1828. Allocation of monies

A. On the recommendation of the board, the executive director shall allocate and the state treasurer shall pay from the peace officers' training fund to each county, city or town of this state that has applied and qualified for a grant pursuant to this chapter a sum that will reimburse the political subdivision in an amount not to exceed one-half of the salary paid to each peace officer while participating in training. The cost of the training and living and travel expenses up to the maximum as prescribed by title 38, chapter 4, article 2 that are incurred by state, county, city or town officers while participating in training may be paid to the appropriate state agency or political subdivision.

B. If the monies in the peace officers' training fund budgeted by the board for such salary reimbursement are insufficient to allocate such amount to each participating county, city or town, the amount that is allocated to each shall be reduced proportionately. The board may refuse to allocate monies to any state agency, county, city or town that has not, throughout the period covered by the allocation, adhered to the recruitment and training standards established by the board as applicable to personnel recruited or trained by the state agency, county, city or town during the allocation period.

41-1828.01. Required law enforcement agency reporting

A. A law enforcement agency may report to the board any peace officer misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3 at any time and shall report this misconduct on the peace officer's termination, resignation or separation from the agency.

B. On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3.

C. Civil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.

41-1828.02. Certified peace officers; hiring reimbursement; definition

A. A law enforcement agency in this state or a city, town, county or political subdivision of this state that employs a peace officer and that pays the costs of the peace officer's certification and training under section 41-1822 may seek reimbursement for the costs of the law enforcement officer's certification and training from a hiring law enforcement agency. The hiring law enforcement agency shall reimburse all of the costs related to the peace officer's certification and training, including travel, housing and salary during the training, as follows:

1. One hundred percent of all costs, if the certified peace officer leaves the original law enforcement agency within twelve months after employment.

2. Seventy-five percent of all costs, if the certified peace officer leaves the original law enforcement agency after twelve months and not more than twenty-four months after employment.

3. Fifty percent of all costs, if the certified peace officer leaves the original law enforcement agency after twenty-four months and not more than thirty-six months after employment.

B. The original law enforcement agency may waive reimbursement for a certified peace officer who voluntarily leaves employment and who is subsequently employed by the hiring law enforcement agency for any reason. Employee hardship and extenuating family circumstances shall be considered presumptive reasons for reimbursement waivers.

C. The hiring law enforcement agency may not require a certified peace officer to assume responsibility for repaying the peace officer's certification costs or any other related costs in an effort to be reimbursed pursuant to this section.

D. When making employment decisions, a hiring law enforcement agency may not consider whether the hiring law enforcement agency will be required to make reimbursement for certification and training costs pursuant to this section if a particular applicant is employed.

E. The original law enforcement agency shall submit an itemized statement to the certified peace officer's hiring law enforcement agency for payment and may enforce collection of any obligation through civil remedies and procedures.

F. A law enforcement agency shall include an explanation of the hiring reimbursement requirements prescribed by this section in the employment documentation provided to a certified peace officer during the law enforcement agency's hiring process.

G. This section does not apply to an employee who leaves the original law enforcement agency and is not employed as a certified peace officer for one year or more and is subsequently hired by a hiring law enforcement agency.

H. For the purposes of this section, "hiring law enforcement agency" means a law enforcement agency in this state or a city, town, county or political subdivision of this state that does both of the following:

1. Subsequently hires a certified peace officer after the certified peace officer voluntarily leaves the employment of the law enforcement agency that paid the peace officer's costs of certification.

2. Hired the officer as a certified peace officer.

41-1661. Definitions

In this article, unless the context otherwise requires:

1. "Academy" means the correctional officer training academy.

2. "Board" means the Arizona peace officer standards and training board.

3. "Correctional officer" means a person, other than an elected official, who is employed by this state or a county, city or town and who is responsible for the supervision, protection, care, custody or control of inmates in a state, county or municipal correctional institution, including counselors but excluding secretarial, clerical and professionally trained personnel.

4. "Director" means the director of the state department of corrections.

5. "Employing agency" means this state or the county or municipal agency which employs correctional officers.

41-1662. General training powers and duties of the director; fund

A. The director shall:

1. Operate a correctional officer training academy.

2. Establish and maintain a correctional officer training program at the academy.

B. The director may:

1. Employ personnel and faculty as may be necessary to perform the academy's functions and operate the academy.

2. Enter into contracts, including intergovernmental agreements under title 11, chapter 7, article 3, as may be necessary to administer this article. Counties, cities and towns may contract for training their correctional officers at the academy.

3. Adopt administrative rules for implementing this article and for the academy's internal management and control.

4. Solicit, accept, spend and account for gifts and grants. A separate, permanent training fund is established. The director shall administer the fund. Monies received as gifts or grants shall be deposited in the fund. Monies received as gifts or grants are subject to section 35-149.

D-2.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9

Amend: R18-9-B201, R18-9-A701, R18-9-B702, Article 8

Repeal: Part E, R18-9-E701

New Section: R18-9-A801, R18-9-A802, R18-9-A803, R18-9-B804, R18-9-B805, R18-9-B806, R18-9-B807, R18-9-B808, R18-9-B809, R18-9-B810, R18-9-B811, R18-9-C81, R18-9-C813, R18-9-C814, R18-9-C815, R18-9-C816, R18-9-C817, R18-9-C818, R18-9-D819, R18-9-D820, R18-9-D821, R18-9-D822, R18-9-D823, R18-9-E824, R18-9-E825, R18-9-E826, R18-9-E827, R18-9-E828, R18-9-E829, R18-9-E830, R18-9-E831, R18-9-F832, R18-9-F833, R18-9-F834, R18-9-F835, R18-9-F836, R18-9-F837

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 9

Amend: R18-9-B201, R18-9-A701, R18-9-B702, Article 8

Repeal: Part E, R18-9-E701

New Section: R18-9-A801, R18-9-A802, R18-9-A803, R18-9-B804, R18-9-B805, R18-9-B806, R18-9-B807, R18-9-B808, R18-9-B809, R18-9-B810, R18-9-B811, R18-9-C81, R18-9-C813, R18-9-C814, R18-9-C815, R18-9-C816, R18-9-C817, R18-9-C818, R18-9-D819, R18-9-D820, R18-9-D821, R18-9-D822, R18-9-D823, R18-9-E824, R18-9-E825, R18-9-E826, R18-9-E827, R18-9-E828, R18-9-E829, R18-9-E830, R18-9-E831, R18-9-F832, R18-9-F833, R18-9-F834, R18-9-F835, R18-9-F836, R18-9-F837

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to repeal Part E of Title 18, Chapter 9, Article 7, which contains one (1) rule R18-9-E701. The Department additionally seeks to amend three (3) rules in Article 7 and to add thirty-seven (37) rules to an amended Title 18, Chapter 9, Article 8. These amendments, additions, and repeals all relate to the Department's new Advance Water Purification (AWP) program.

The Department was required to create this program and accompanying rules as a result of the passage of HB2681 in 2022, which created the authorizing statute found at A.R.S. § 49-211. The legislature authorized the Department to create the AWP program to help with Arizona's water needs, and to ensure the program maintains the highest standards for both the health of Arizonans and the environment. The legislature specifically required the Department to create a program that allows wastewater to be treated for it to be safe for drinking use. The Department has indicated California, Colorado, and Texas as states that have recently enacted similar programs.

The Department intends on repealing R18-9-E701 because it covered the advanced water treatment facilities that the Department considers a predecessor to the APW program. Only one facility was permitted under this predecessor program and the facility did not distribute water for drinking. The Department has indicated that they have worked closely with this permit holder to transition to the AWP program.

The amendments to R18-9-B201 will be adding "A person may only create and maintain a connection between sewage treatment facilities, advanced water treatment facilities, and a potable water supply under an Advanced Water Purification permit issued pursuant to Article 8 of this Chapter."

The amendment to R18-9-A701 will remove references to the repealed R18-9-E701.

The amendment to R18-9-B702 will clarify that providing water for human consumption from a reclaimed water source is prohibited except as permitted under the new Article 8 of this chapter.

The new rules are broken into six parts with a brief overview of each below.

- Part A covers general provisions related to the AWP program including definitions used for the program and the applicability of the Safe Drinking Water Act
- Part B contains what the Department indicates is the foundational requirements of the program. The rules in Part B include laying out the requirements to obtain AWP operator certification. This establishes examination requirements, experience requirements, staffing requirements, the necessary requirements for operation of facilities, and what is required to maintain certification.
- Part C contains requirements for the permit application process. This includes requirements for chemical and pathogen monitoring of the initial source water, pilot studies, and the actual permit and demonstration permit application requirements and process.
- Part D contains the final set of requirements and conditions for permitting, including required public participation in the process. Part D also contains details concerning the renewal, suspension, or termination of a permit or demonstration permit.

- Part E contains the requirements for any substance (constituent) found in water, including the monitoring process, the recording process, and the reporting process of these substances.
- Part F contains the requirements for design mandates concerning chemical and pathogen control including response times in case of a system failure, potential vulnerabilities in the system, Total Organic Carbon management, and corrosion control.

The Department seeks to incorporate by reference multiple materials in R18-9-A802. The Department meets the requirements for incorporation under 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. However, the AWP program does require fees and those are covered in the rulemaking for Title 18, Chapter 14.

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 reviewed hundreds of studies as part of the preliminary process for drafting these rules. These reviews were conducted as part of the TAG team that consisted of Department staff, academics, utilities, municipalities, regulators, consultants, and scientists. The ultimate conclusions and scope of the review of these studies can be found in the Department's Roadmap at https://static.azdeq.gov/wqd/awp/roadmap.pdf. This report was completed at the end of June 2023, since then the Department has relied upon 6 additional studies which are found in item 8 of the preamble of the NFRM (pg 19-22). The Department has indicated that all studies have been made available to the public and stakeholders, and can be provided directly upon request. Council staff believes the Department to be in compliance with A.R.S. § 41-1052(D)(8).

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

This rulemaking is being conducted to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211. The full scope of stakeholders who may incur direct impacts from this rulemaking include the Department, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment.

Impacts to the Department include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program; however, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees. The WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. Customers of WPAs that have adopted AWP are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. The general public is impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

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?

Because AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs, the Department has determined that potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are less intrusive or less costly alternative methods that would be preferable. The AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design.

6. What are the economic impacts on stakeholders?

To determine the economic impact on the stakeholders identified in the economic impact summary, the Department adopted the following convention: minimal impact to mean $10,000 or less; moderate impact to mean $10,001-$1,000,000; substantial impact to mean $1,000,001 or more; and significant impact to mean that the cost/burden could not be calculated, but the Department expects it to be significant.

A high-level overview of the economic impact on stakeholders is given in the following table:

Description of Affected Group	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona	Increased agency responsibilities for administration,	Minimal	

Department of Environmental Quality (ADEQ)	oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.		
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).	Minimal	
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

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

The Department indicates that there were numerous changes between the proposed rules and the rules now before the council. The changes can be found on pgs 46 to 57 of the preamble in the NFRM. The Department indicated most of these changes are a result of stakeholder input. Due to the technical nature of the rules, the Department clarified certain

changes with Council staff to verify that the changes were not substantive and were merely clarifying what was already present in the proposed rule language. After reviewing the proposed rules and the current NFRM, and having discussions with the Department, Council staff believes that the changes were not substantively different. The reasoning is that while these changes do impact the requirements found in certain rules, the subject matter and main issue of the rule did not change. Additionally, the stakeholders were made aware of these changes and the discussion behind these changes. and the ultimate effects of the rule did not change. Thus, Council staff believes the Department is in compliance with A.R.S. § 41-1025.

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

The Department indicates it received 86 comments as part of this rulemaking. The full comments are attached as part of the materials and found on pg 57-109 in the NFRM. Council staff believes that the department adequately addressed the comments in accordance with A.R.S. § 41-1052(D)(7).

Prior to receiving stakeholder input on the NFRM, the Department began an initial engagement of stakeholders through a Technical Advisory Group (TAG) from October 2022 through June 2023. This team consisted of Department staff, academics, utilities, municipalities, regulators, consultants, and scientists. This group met 114 times, conducted 6 stakeholder meetings, and conducted 15 other types of public engagement events, including surveys of stakeholders. The Department has indicated consistent communication with the entities that are interested in implementing an AWP program in the future. The Department completed an informal 30 day comment period in July 2024 and completed a stakeholder meeting on August 1, 2024. The Department published these comments and responses to the Department website.

For the 86 comments the Department received during the formal comment period, 14 came from the general public, 10 were from interest groups, the remaining 62 came from either utilities or local governments. The Department did update several rules for additional clarification as a result of the comments.

The general public concerns were related to cost and the safety measures in place to prevent the public from being exposed to harmful contaminants. Council staff believes the Department adequately addressed these concerns in their responses by providing details on how an AWP facility measures chemicals and where the allowable amounts come from. For the cost element, the Department explained that the AWP program is voluntary and is funded by fees from those who opt into the program.

The interest groups, local governments, and utilities that commented on the rules had a variety of comments on the rules. Comments varied between under or over regulation, and environmental concerns. Most concerns were not frequent among the commenters, with the exception of multiple comments concerning Tier 2 chemicals and agencies requesting further guidance to avoid extra costs in tracking certain chemicals. Council staff believes that the Department provided sufficient explanations on why Tier 2 chemicals are not as well defined

because unlike Tier 1 and Tier 3, there are substantially more potential chemicals and those are more likely to vary based on the facility type.

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."

This specific rulemaking does create new individual permits. The Department is authorized to issue permits per A.R.S. § 49-211(B). AWP is an optional program that requires utilities/municipalities to apply for permits. The requirements permits vary based on the circumstances of the applicant and as such cannot be issued as a general permit under A.R.S. § 41-1037(A)(3). Council staff believes the Department is in compliance with A.R.S. §47-1037.

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

Pursuant to A.R.S. § 41-1052(D)(9), "[t]he council shall not approve the rule unless…[t]he rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."

The Department indicates, while the Safe Drinking Water Act (SDWA) (40 USC § 300f et seq.) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (see R18-9-A801) as a source, which is the subject of this final rule. The Department states, SDWA only contemplates surface and ground water as sources for public water systems. The Department indicates some AWP facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP Program. These differences are explained to applicants and participants in the AWP program as found in proposed R18-9-A803.

11. Conclusion

This regular rulemaking from the Department of Environmental Quality (Department) seeks to repeal Part E of Article 7, which contains one (1) rule R18-9-E701. The Department

additionally seeks to amend three (3) rules in Article 7 and to add thirty-seven (37) rules to an amended Article 8. The Department indicates that these rules will accomplish the legislature requirement to create and administer a program that treats wastewater for potable reuse. This program, while required to be created by statute, is voluntary for entities/municipalities to participate in.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) to "avoid a violation of...state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." The Department was required to complete a rulemaking by December 31, 2024 per A.R.S. § 49-211. The Department indicates that while that date has passed, the goal of the immediate effective date is to prevent the length of time without having this program in place to a minimum. The Department has indicated they have worked diligently in the time frame and have worked extensively with stakeholders to create this program. The Department states that while they could not meet the statutory deadline it was a result of ensuring this new regulatory program was as least burdensome as possible while protecting the health of Arizonans. Council staff believes the Department has provided sufficient documentation of the extensive stakeholder process, and thus Council staff believes the Department has provided sufficient justification for an immediate efficient date pursuant to A.R.S. § 41-1032(A)(2).

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

January 16, 2025

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Advanced Water Purification (AWP) Regular Rulemaking: Title 18, Environmental Quality, Chapters 1, 5, 9, and 14

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 March 4th, 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. R1-6-201:

I. Information required under A.A.C. R1-6-201(A)(1):

(A)(1)(a) The public record closed for all rules on December 2nd, 2024 at 11:59 p.m.
(A)(1)(b) The rulemaking activity does not relate to a five-year review report.
(A)(1)(c) The rulemaking activity does establish a new fee; please see A.R.S. § 49-211(A) for authority.
(A)(1)(d) The rulemaking does not contain a fee increase as the AWP Program is being established for the first time and has no appropriately comparable precedent in state or Federal law.
(A)(1)(e) An immediate effective date is requested.
(A)(1)(f) 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 (*see* subheading III, below).
(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S.

§ 41-1055(B)(3)(a) (*see* subheading III, below).

(A)(1)(h) A list of documents is enclosed (*see* subheading III, below).

II. Information required under A.A.C. R1-6-201(A)(2) through (8):

(A)(2) Four (4) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading III, below);

(A)(3) The preambles contain an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055 (*see* subheading III, below);

(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading III, below);

(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;

(A)(6) Materials were incorporated by reference in this rulemaking (*see* subheading III, below);

(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading III, below);

(A)(8) A list of statutes or other rules referred to in the definitions (*see* subheading III, below).

III. List of documents enclosed (38 documents total)**:**

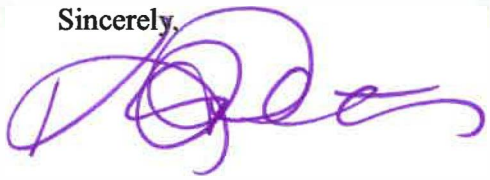
- One (1) Cover Letter (R1-6-201(A)(1));
  - AWP_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWP_JLBC.pdf
- Four (4) NFRMs (R1-6-201(A)(2));
  - AWP_NFRM_18_AAC_1.pdf
  - AWP_NFRM_18_AAC_5.pdf
  - AWP_NFRM_18_AAC_9.pdf
  - AWP_NFRM_18_AAC_14.pdf
- Four (4) EISs (R1-6-201(A)(3));
  - AWP_EIS_18_AAC_1.pdf
  - AWP_EIS_18_AAC_5.pdf
  - AWP_EIS_18_AAC_9.pdf
  - AWP_EIS_18_AAC_14.pdf
- Four (4) Public Comments Received Documents (R1-6-201(A)(4));
  - AWP_Cmts_18_AAC_1.pdf
  - AWP_Cmts_18_AAC_5.pdf
  - AWP_Cmts_18_AAC_9.pdf
  - AWP_Cmts_18_AAC_14.pdf

- Thirteen (13) Materials Incorporated by Reference (R1-6-201(A)(6));
  - "Method 5710B"
    - R18-9-A802(B)(1); R18-9-F834(C)(2)(b)(v)
    - SM_5710.pdf
  - "Method 5710C"
    - R18-9-A802(B)(2); R18-9-F834(C)(2)(a) & (b)
    - SM_5710.pdf
  - "Analytical and Data Quality Systems"
    - R18-9-A802(B)(3); R18-9-A802(C)(1)
    - 2018-1000-Analytical-and-Data-Quality-Systems.pdf
  - Quality System"
    - R18-9-A802(B)(4); R18-9-A802(C)(2)
    - SM_7020.pdf
  - "Quality Assurance and Quality Control in Laboratory Toxicity Tests"
    - R18-9-A802(B)(5); R18-9-A802(C)(3)
    - SM_8020.pdf
  - "Quality Assurance/Quality Control"
    - R18-9-A802(B)(6); R18-9-A802(C)(4)
    - SM_9020.pdf
  - "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices"
    - R18-9-A802(B)(7); R18-9-F832(C)(4)
    - ASTM-D4194-23.pdf
  - "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5"
    - R18-9-A802(B)(8); R18-9-F834(C)(2)(c)(i) & (ii)
    - CCL5_DBPs_87_FR_68066.pdf
  - "2018 Edition of the Drinking Water Standards and Health Advisories"
    - R18-9-A802(B)(9); R18-9-E826(D)(4), (5), (6) & (7); R1 8-9-F834(C)(2)(c)(ii)
    - HA_Table - 2018.pdf
  - "Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA"
    - R18-9-A802(B)(11); R18-9-E828(C)(9)
    - EPA Method 1623.1.pdf
  - "Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR"
    - R18-9-A802(B)(12); R18-9-E828(C)(9)
    - EPA Method 1615.pdf
  - "Characteristic of ignitability"
    - R18-9-A802(B)(13); R18-9-E824(B)(13)(a)

        - 40 CFR 261.21.pdf
    - "Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility"
        - R18-9-A802(B)(14); R18-9-F832(D)(4)(b)(viii)
        - Consideration_DPR_Downstream.pdf
- General and Specific Authorizing Statutes (R1-6-201(A)(7));
    - 49-104 - Powers and duties of the department and director.pdf
    - 49-203 - Powers and duties of the director and department.pdf
    - 49-211 - Direct potable reuse of treated wastewater; fees; rules.pdf
- Statutes or Rules Referred to in the Definitions (R1-6-201(A)(8));
    - R1_6_201_A_8.pdf
        - 40_CFR_141_201.pdf
        - 40_CFR_Part_141 - 7_1_23.pdf
        - 42_USC_300f_et_seq.pdf
        - 49-201 - Definitions.pdf
        - 49-203 - Powers and duties of the director and department.pdf
        - AAC_Title_18_Chptr_9_Arts_1_2_3.pdf
        - ARS_Title 49 _Chpt_2_ Art_3.pdf
- A.R.S. § 41-1039(B) Governor's Approval
    - WATER Direct Potable Reuse 2nd APPROVAL.pdf

Thank you for your timely review and approval. Please contact Jon Rezabek or Natalie Kilker, Legal Specialists, Water Quality Division, 602-771-8219, 602-771-0358 or rezabek.jon@azdeq.gov, kilker.natalie@azdeq.gov if you have any questions.

Sincerely,



Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

PREAMBLE

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

March 5, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-9-B201	Amend
R18-9-A701	Amend
R18-9-B702	Amend
Part E	Repeal
R18-9-E701	Repeal
Article 8	Amend
R18-9-A801	New Section
R18-9-A802	New Section
R18-9-A803	New Section
R18-9-B804	New Section
R18-9-B805	New Section
R18-9-B806	New Section
R18-9-B807	New Section
R18-9-B808	New Section
R18-9-B809	New Section
R18-9-B810	New Section
R18-9-B811	New Section
R18-9-C81	New Section
R18-9-C813	New Section
R18-9-C814	New Section
R18-9-C815	New Section
R18-9-C816	New Section

R18-9-C817	New Section
R18-9-C818	New Section
R18-9-D819	New Section
R18-9-D820	New Section
R18-9-D821	New Section
R18-9-D822	New Section
R18-9-D823	New Section
R18-9-E824	New Section
R18-9-E825	New Section
R18-9-E826	New Section
R18-9-E827	New Section
R18-9-E828	New Section
R18-9-E829	New Section
R18-9-E830	New Section
R18-9-E831	New Section
R18-9-F832	New Section
R18-9-F833	New Section
R18-9-F834	New Section
R18-9-F835	New Section
R18-9-F836	New Section
R18-9-F837	New Section

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), (7); 49-203(A)(7), (9), (10)

Implementing statute: A.R.S. § 49-211

4. The effective date of the rule:

This rule shall become effective immediately after a certified original of the rule and preamble are filed with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is March 4, 2025.

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):

The rule shall be effective on March 4, 2025. ADEQ selected this date pursuant to A.R.S. § 41-1032(A)(2) in order "to avoid a violation of … state law, if the need for an immediate effective date is not created due to the agency's delay or inaction". A.R.S. § 49-211 requires ADEQ to, "[o]n or before December 31, 2024 … adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program [A.K.A. - AWP regulatory program], including rules establishing permitting standards and a permit application process."

While an immediate effective date will not avoid a violation of A.R.S. § 49-211, it serves to ameliorate the extent of the violation by establishing an effective date as close in time as possible to the statutory deadline "on or before December 31, 2024". The Legislature charged ADEQ with the adoption of an advanced water purification program in Fall 2022, setting a justifiably aggressive deadline of December 31, 2024. Since that time, ADEQ diligently undertook an extensive program design and rule-writing approach to appropriately design the revolutionary program. Additionally, ADEQ conducted a special stakeholder approach commensurate with the intricacies of the program, itself, with myriad stakeholder efforts outlined in Section 7 of this Notice of Final Rulemaking. This process included engagement at all phases of the project, in the program framework and guiding principle development phase to the draft rule phase, and included multiple opportunities for ADEQ to work with and educate stakeholders, receive feedback on program components, and improve the program. Arizona is one of only a handful of states with a regulatory framework for advanced water purification, and the process was, therefore, carefully conducted to best preserve the interests of the Legislature and the health of Arizonans. While ADEQ worked just as aggressively to achieve the statutory deadline, best efforts nevertheless fell a few months short. For these reasons and pursuant to A.R.S. § 41-1032(A)(2), ADEQ did not delay or fail to act in such a way that led to the need for an immediate effective date.

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 Proposed Rulemaking: 30 A.A.R. 3196, Issue Date: November 1, 2024, Issue Number: 44, File Number: R24-211.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2879, Issue Date: September 20, 2024, Issue Number: 38, File Number: R24, 179.

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

Name: Jon Rezabek

Natalie Kilker

Title: Legal Specialists

Division: Water Quality

Address: Arizona Department of Environmental Quality

1110 W. Washington Ave.

Phoenix, AZ 85007

Telephone: (602) 771-8219

(602) 771-0358

Fax: (602) 771-2366

Email: reuserulemaking@azdeq.gov

Website: https://www.azdeq.gov/awp-rulemaking

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

***Introduction*:**

The Arizona Department of Environmental Quality ("ADEQ") is mandated by the Arizona Legislature, pursuant to Arizona Revised Statutes (A.R.S.) § 49-211, to "adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process". The statute, adopted from House Bill 2861, as enacted in the Second Regular Session on June 28, 2022, became effective on September 24, 2022. For purposes of this Notice and the final rule, the term "direct potable reuse" is synonymous with "Advanced Water Purification" (or "AWP"), as the program is now called.

ADEQ, in consideration of Arizona's water supply needs and the Legislative mandate, interpreted A.R.S. § 49-211 as a call to establish an AWP program that is both protective of human health and the environment, as well as imposing minimum burden upon the stakeholder community in achieving that goal. The result of that effort is detailed in the final programmatic requirements placed in the Arizona Administrative Code (A.A.C.), Title 18, Chapter 9, Article 8, through this Notice of Final Rulemaking (NFRM) and through the simultaneously filed associated NFRMs, proposing supporting rules and amendments to Title 18, Chapters 1, 5, 9 and 14.

***Background*:**

Arizona faces significant water supply challenges requiring proactive approaches to conservation and stewardship, in anticipation of decreased water availability in the future. Arizona is currently experiencing a severe and sustained drought, persisting since 1994. The state has experienced an average annual precipitation of approximately 12 inches, and climate data reveals a concerning trend: a consistent reduction of 0.9 inches of rainfall per year over the past three decades (Arizona State University, 2023, Climate of Arizona, https://azclimate.asu.edu/climate/). As a result of the continuing mega-drought, a Drought Emergency Declaration has existed since 1999. The impacts can be felt heavily in the rural areas of the state, where alternative water supplies are generally very limited and the economy is strongly affected by drought (e.g., grazing, irrigated agriculture, recreation, forestry). Most of rural Arizona relies exclusively on groundwater as its primary water source and lacks the groundwater regulations and conservation requirements which have been present in the state's active management areas (AMAs) and irrigation non-expansion areas (INAs). In addition to the reduced precipitation within Arizona, the Colorado River Basin is also facing decades-long drought conditions, which have led to historically low water levels in Colorado River system reservoirs. As a result, Arizona has implemented measures to reduce its consumption of Colorado River water. The Lower Colorado River Basin first experienced a Tier 1 Shortage as agreed in the 2007 Interim Guidelines and the Drought Contingency Plan in 2021. In 2022, Bureau of Reclamation Commissioner Camille Touton called on the Colorado River states to conserve between 2-4 million acre feet per year to address the critically low levels in Lake Powell and Lake Mead following a dire water year. Fortunately, voluntary reductions in the Lower Basin and a healthy water year 2022 averted a decline to critically low elevations. However, as the Basin States look ahead, climate projections and historical trends indicate that the Basin is likely to face increasing average temperatures and reduced precipitation in the coming years. Arizonans will likely be called upon to live with further reduced Colorado River supplies for the foreseeable future as the next set of operational guidelines for the Colorado River are finalized.

Beyond the shrinking water supply, economic growth presents water providers with formidable challenges in meeting demand. As water-intensive industries relocate to Arizona, industrial water demands may increase. Furthermore, there may be challenges with maintaining the necessary housing growth due to the release of the new models of groundwater conditions in the Phoenix and Pinal AMAs. The results of the groundwater flow model projections show that over a period of 100 years, the Phoenix AMA will experience 4.86 million acre-feet (maf) of unmet demand for groundwater supplies and the Pinal AMA will experience 8.1 maf of unmet demand for groundwater supplies, given current conditions. In keeping with these findings of unmet demand, the State will not approve new determinations of Assured Water Supply within the Phoenix and Pinal AMAs based on groundwater supplies. This will lead to an increased competition for limited alternative water supplies. As growth continues, there will be an increasing need for sustainable and innovative water resource management strategies to accommodate the state's evolving needs.

***What is AWP*?**

Advanced Water Purification (AWP) is defined as the treatment and distribution of a municipal wastewater stream for use as potable water without the use or with limited use of an environmental buffer (US EPA, 2017, Potable Reuse Compendium). AWP has been shown to be a safe and effective source of potable water over decades of implementation in projects that have been installed worldwide at facilities in Big Spring, Texas (2013); Wichita Falls, Texas (2014); Namibia (1968 and 2002); Singapore (2019); and South Africa (2011) (Lahnsteiner, J., Van Rensburg, P., & Esterhuizen, J., 2018, Direct potable reuse–a feasible water management option. Journal of Water Reuse and Desalination, 8(1), 14-28).

AWP applications typically consist of a conventional water reclamation facility (WRF) or wastewater treatment plant (WWTP) that performs solids, carbon, nutrient, and pathogen removal and an advanced water treatment facility (AWTF) that provides additional pathogen and trace chemical removal. An AWTF is a utility or treatment plant where recycled wastewater is treated to produce purified water to meet specific AWP requirements. AWTFs use a multi-barrier approach where several redundant unit processes in series are installed to treat WRF effluent to potable water standards. Depending on the site-specific infrastructure configuration and treatment capabilities, the AWTF effluent may be introduced into several different locations of the potable water treatment and distribution system to be reused: (i) in the intake to the existing drinking water treatment facility (DWTF); (ii) after the DWTF and prior to the potable water distribution system; or (iii) Directly into the potable water distribution system.

***Evolution of AWP in Regulations*:**

A predecessor to the AWP program was adopted in the A.A.C. in 2018 at R18-9-E701, including a definition of "[a]dvanced reclaimed water treatment facility" at R18-9-A701(1). An associated NFRM filed simultaneously with this NFRM will repeal these rules in their entirety to make way for the AWP program. This prior, less detailed, single-ruled program was placed in Title 18, Chapter 9, Article 7 of the A.A.C. Article 7 is entitled "Use of Recycled Water". Part E of Article 7 was entitled "Purified Water for Potable Use" and R18-9-E701 was entitled "Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility". R18-9-E701 detailed basic requirements for an advanced reclaimed water treatment facility and, during the rule's tenure, was used to permit one such facility. The facility was not authorized to, and did not, distribute purified water as drinking water through established conveyances or networks. As was stated above, in recent years, the Arizona Legislature determined a need for a more robust regulatory program for AWP. The Legislature passed House Bill 2861 into law in 2022, effectuating statute A.R.S. § 49-211, which led directly to the establishment of the final AWP program and the repeal of the previous program.

***Associated Rulemakings*:**

This final rulemaking includes four NFRMs, adding, repealing or amending rules in A.A.C. Title 18. Environmental Quality:

- Chapter 1 (Department of Environmental Quality - Administration),
- Chapter 5 (Department of Environmental Quality - Environmental Reviews and Certification),

- Chapter 9 (Department of Environmental Quality - Water Pollution Control), and
- Chapter 14 (Department of Environmental Quality - Permit and Compliance Fees).

The final changes to Chapter 1 are specific to updating the Licensing Time-Frame requirements in Article 5 to account for the new AWP program. The final changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The final additions, amendments and repeals to Chapter 9 are all aimed at making way for and establishing the AWP regulatory program. The final changes to Chapter 14 are specific to updating the Water Quality fees in Article 1 to accommodate the AWP program commensurate with other water quality programs.

***Placement, Structure and Design of the Final AWP Programmatic Rules*:**

The AWP regulatory program's central rules are placed in Title 18 (Environmental Quality), Chapter 9, (Department of Environmental Quality - Water Pollution Control), Article 8 (Advanced Water Purification) of the A.A.C. Article 8 was vacant at the time the NPRM and this NFRM was filed, with previous rules in Article 8 repealed since the year 2000.

The immediate subsections below explain the program's primary components and rules, distinguished by the "Parts" within Article 8:

- Part A. General Provisions: R18-9-A801 - R18-9-A803

This Part contains provisions applicable to the entire Article, including definitions and incorporation by reference material. R18-9-A802, "Program Review; Incorporation by Reference; Quality Assurance/Quality Control Methodologies", requires ADEQ to review the AWP program, upon certain triggers, to assess the rules and components for adequacy against currently available data and best available science in order to determine whether any rule should be amended or appealed or any incorporated by reference material updated. These triggers include updated health advisory values and other emerging scientific developments impacting the AWP program. The rule also contains a list of material incorporated by reference, including the version incorporated and where the general public may access the version. Notably, R18-9-A803 is entitled "Applicability of the Safe Drinking Water Act" and details the interconnection between the AWP program and the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The AWP regulatory program derives its authority from Arizona state statute, as is detailed above. At the time of this rulemaking, the AWP subject matter had no direct federal regulatory analog. However, due to the flexibility of the AWP program and the multitude of options available to an AWP permittee concerning how to best employ AWP in accordance with the system needs, infrastructure, and economic situation, an AWTF may introduce advanced treated water at several locations, including to a public water system as a source (advanced treated water), or directly to distribution for human consumption (finished water). This means that there are potential interconnections between the AWP program and the protections of the Safe Drinking Water Act. Therefore, the content

of R18-9-A803 was necessary to outline that intersection. For example, the section presumptively characterizes treated wastewater as surface water under the Safe Drinking Water Act, provides that nothing in the AWP program exempts any AWP facility from applicable Safe Drinking Water Act requirements, and clarifies the connections between A.A.C. Title 18, Chapter 5, Article 5, and the AWP program.

- Part B. General Program Requirements: R18-9-B804 - R18-9-B811

This Part contains foundational requirements of the AWP program. R18-9-B804, entitled "Advanced Water Purification Operator Certification" sets forth the final applicability and requirements for AWTF operators under a new AWP operator certification. The final rule requires an AWP operator to i) pass an AWP validated examination; ii) meet advanced water treatment qualifying experience requirements; and iii) be certified as either a Grade 3 or Grade 4 drinking water or wastewater operator. Under subsection (F) of the final rule the AWP operator examination requirements are established, which will include topics specific to understanding and operation of advanced treatment technologies at an AWTF. In order to ensure that all applicants are knowledgeable of drinking water treatment technologies and operations, the AWP rule requires that applicants with a Grade 3 or Grade 4 wastewater treatment operator certification take a separate version of the AWP operator examination which tests drinking water knowledge equivalent to existing Grade 3 drinking water treatment operator examinations. Types of AWP operators include shift operators, operators in direct responsible charge, and an operator in direct responsible charge proxy. Only applicants with Grade 4 drinking water operator experience are eligible for certification as AWP operator in direct responsible charge. AWP shift operators are eligible for designation as an operator in direct responsible charge proxy.

Subsection (D) sets forth general requirements including the requirement for AWPRA facility owners to ensure proper operation of AWPRA facilities. Under this provision, ADEQ requires a facility receiving pathogen treatment credits under AWP to have at least one full-time AWP operator in direct responsible charge on staff that is onsite for at least two full shifts per day. The Department intends for an operator in direct responsible charge to be onsite, consistently, throughout the year at a frequency and duration that ensures the facility is primarily operated, hands-on, by the most experienced and qualified operator. The subsection, additionally, provides for what must occur when an operator in direct responsible charge is not onsite – the operator in direct responsible charge proxy must be onsite and the operator in direct responsible charge must be available to provide direction, if necessary. Furthermore subsection (D) provides a waiver option that an AWPRA may request at any time, which would supplant the requirement for an operator in direct responsible charge to be onsite for at least two full shifts per day with an alternative operation schedule, as agreed upon and set forth in the AWPRA's operations plan.

Subsection (K) states additional minimum qualifying experience, requiring all applicants to have at least one year of advanced water treatment qualifying experience. Advanced water treatment qualifying experience may be obtained by operating an AWP pilot facility, operating an AWP demonstration facility that does not distribute finished water, through a demonstration of

experiential reciprocity, through an apprenticeship under an AWP operator on-site at an AWP facility, or through any other Department-approved method.

The final rule includes transition provisions in subsection (M), providing a grace period of two years from the effective date of the AWP programmatic rules in Chapter 9, during which time operators of facilities receiving pathogen treatment credits under AWP are exempted from the AWP operator certification requirements in R18-9-B804 in order to allow operators reasonable time to obtain certification under the new program. During this transition period, the final rule requires AWTF operators to be Grade 4 drinking water-certified operators who have completed additional Department-approved training, as appropriate.

R18-9-B805, entitled, "Advanced Water Purification Responsible Agency Formation; Joint Plan", details final requirements for formation of the entity, known as the Advanced Water Purification Responsible Agency (AWPRA), that applies for permitting under the AWP program. R18-9-B806, entitled "General Requirements", details program prohibitions, confidentiality provisions, and the general requirement that treated wastewater used to supply an AWP project must originate as municipal wastewater. R18-9-B807, entitled "Inspections, Violations, and Enforcement", clarifies the applicable enforcement authority related to the AWP program. R18-9-B808, entitled "Recordkeeping", details final requirements for the AWPRA related to certification, collection, and retention of records. R18-9-B809, entitled "Construction and Compliance with Plans", regulates facility modifications prior to permitting. R18-9-B810, entitled "Record Drawings", lists requirements surrounding the recording and certification of project drawings. R18-9-B811, entitled "Outreach; Public Communications Plan", sets forth requirements for an AWPRA's Public Communications Plan.

- Part C. Pre-Permit and Permit Requirements: R18-9-C812 - R18-9-C818

This Part contains requirements in preparation for, and including, permit application. It includes a pre-application conference option in order to facilitate a discussion between the applicant and the Department in the preliminary stages of an application process. The Part also includes details on when a "Project Advisory Committee" may be formed to assist the Department and the applicant in project development and review. R18-9-C813, entitled, "Applicant Pathways Depending on National Pretreatment Program Applicability" details pre-permit application procedural requirements of an applicant depending on their applicability to the Clean Water Act's National Pretreatment Program (NPP). The rule enables two different pre-permit procedural approaches, one for AWPRA applicants that are subject to the NPP, and one for AWPRA applicants that are not subject to the NPP. These two pathways were created due to the importance of, and advantage associated with, NPP experience that an applicant will have in sewershed characterization, knowledge, etc., and is intended to promote application autonomy for more sophisticated facilities along with opportunities for Department assistance and review where applicable.

R18-9-C814, entitled, "Initial Source Water Characterization" details chemical and pathogen monitoring of an Advanced Water Treatment Facility's (AWTF) treated wastewater source, which comes from a Water Reclamation Facility (WRF) or Wastewater

Treatment Plant (WWTP). Initial Source Water Characterization or "ISWC" is an important step in identifying chemical and pathogen existence and load in the treated wastewater source in order to determine how to address control through treatment, source control, or a combination of the two. Of note, the ISWC Report must be finalized within three years of ISWC monitoring commencement, unless the Director allows otherwise. Such an expectation will be difficult to justify and must be accompanied by robust data.

R18-9-C815, entitled, "Pilot Study" details the requirements of pilot testing which assists in making decisions about the selection of specific advanced water treatment (AWT) processes, verifying the performance of chosen treatment processes, providing the opportunity to evaluate the effectiveness of different types of treatment processes and designing of the full-scale AWP process. Notably, the rule allows an applicant to conduct the Pilot Study and Full-Scale Verification simultaneously if the applicant chooses to build to full-scale during what would otherwise be a pilot facility build. If the applicant chooses this pathway, the rule requires a) a consultation with the Department, b) the development and submission of a "Hybrid Pilot and Full-Scale Verification Plan" to the Department for review and comment, and c) the submission of the "Hybrid Pilot and Full-Scale Verification Plan" and "Hybrid Pilot and Full-Scale Verification Report" to the Department for approval under the permit application. This optionality reflects the additional flexibility incorporated into the rule for various types of planned facilities by providing a reasonable construction pathway for facilities that opt to build full-scale at this stage.

R18-9-C816, entitled, "Permit Application" details the permit application requirements and process. R18-9-C817, entitled, "Demonstration permit" details the demonstration permit application requirements and process. An AWP Demonstration permit may be issued under the AWP program for the purpose of showcasing an AWTF for public outreach, finished water tasting, and other related non-distribution purposes. R18-9-C818, entitled, "Compliance Schedule", prescribes the requirements on the AWPRA regarding compliance schedules established by the Department in the AWP permit. It further prohibits the delivery of advanced treated water from an AWTF, or distribution of finished water, until the Department approves all compliance schedule requirements.

- Part D. General Permit Requirements: R18-9-D819 - R18-9-D823

This Part contains final requirements and conditions of permitting. It includes public notice and participation provisions in R18-9-D819 and R18-9-D820, respectively. Additionally, R18-9-D821, entitled "Permit Amendments" prescribes the final permit amendment process, which includes two amendment categories: significant and minor. R18-9-D822, entitled "Permit Term; Permit Renewal" details the five-year term of an AWP permit and the renewal application process. Lastly, R18-9-D823, entitled "Permit Suspension, Revocation, Denial, or Termination" details conditions and factors surrounding ADEQ's decision to revoke, deny, or terminate an AWP permit or AWP demonstration permit.

- Part E. Constituent Control, Monitoring, and Reporting: R18-9-E824 - R18-9-E831

This Part contains the requirements for applicant and permittee constituent control, as well as, monitoring and reporting in preparation for permit application and as a permittee in ongoing permitted operations.

R18-9-E824, entitled, "Enhanced Source Control" details the requirements and process permittees must adhere to in inventorying their sewershed, by, in part, identifying "potentially impactful non-domestic dischargers" and determining a subset therein of "impactful non-domestic dischargers". Additional control measures are required for a permittee's "impactful non-domestic dischargers". The rule also details the general requirements of a permittee's enhanced source control program.

R18-9-E825, entitled, "Tier 1 Chemical Control; Maximum Contaminant Levels" establishes the Safe Drinking Water Act's Primary Drinking Water Maximum Contaminant Levels or (MCLs) as the "Tier 1" chemicals for regulation under the AWP program. Notably, this rule cross-references the drinking water rules in A.A.C. Title 18, Chapter 4, Article 1, R18-4-102, specifically. R18-4-102 incorporates by reference the Code of Federal Regulations (CFR) Title 40, Chapter I, Subchapter D, Part 141. By cross-referencing this incorporation by reference, ADEQ intends for that version of the CFR to apply to AWP, and as that version continues to be updated in the future, the cross-reference serves as a living link between the two programs, ensuring that the same version of the CFR applies to both Chapter 4, Article 1 and the AWP program, in Chapter 9, Article 8. ADEQ plans to update the rules in Chapter 4 to incorporate the most up-to-date version of 40 CFR Part 141 by 2026, ensuring that all future AWP projects, with the first permits expected to be issued in 2027, are approved with the most current standards.

R18-9-E826, entitled, "Tier 2 Chemical Control; Advanced Water Purification-Specific Chemicals", details the process for identifying, calculating and determining the "Tier 2" chemicals for regulation under the AWP program. Tier 2 chemicals are contaminants identified under R18-9-E826 that are not regulated in the Safe Drinking Water Act, but may be present in the treated wastewater source and may pose human health concerns. Due to elevated health concerns with the treated wastewater source of AWTFs and likewise protections in similar regulatory programs and facilities around the world, the rule requires applicants and permittees to generate and maintain a Tier 2 chemical list for treatment or source control (regulation). Tier 2 list determination and associated alert and action levels to be generated under the rule will be largely based on the Environmental Protection Agency's (EPA) "2018 Edition of the Drinking Water Standards and Health Advisories Tables" (EPA HA Table).

In the case where a chemical does not have a health advisory in the EPA HA Table, but does have a notification level, or an equivalent value, in another state's drinking water program – if approved and listed by the Department in the rule – the AWPRA must compare the chemical's projected daily concentration in the AWTF's treated wastewater influent with the approved notification level, or equivalent value. Upon the comparison, if the concentration exceeds the approved value, the chemical shall become a Tier 2 chemical for the purposes of the program. The only chemical that falls into this category at the time of this rulemaking is Trimethylbenzene (1,2,4-) (CAS No. 95-63-6), which has a notification level established in California's drinking water regulations (*see* Heading No. 7 below for reference) and which has been set using an ADEQ-approved methodology. The

rule provides a placeholder for other chemicals which may be added upon due analysis by the Department in the future, as more drinking water standards are established, reviewed, and endorsed by the Department pursuant to R18-9-A802(A).

In the case where a chemical does not have a health advisory in either the EPA HA Table, nor another state's drinking water program, the rule requires the AWPRA to compare the chemical's projected daily concentration with a set of interim, Departmentally-generated health advisories, that may be updated or removed via rulemaking as additional information becomes available. If the concentration exceeds the Departmentally-generated health advisory, the chemical shall become a Tier 2 chemical, but only for ongoing monitoring purposes pursuant to R18-9-E829. Additionally, this subcategory of Tier 2 chemicals is exempt from all compliance requirements under R18-9-E829(D) and are not to be considered part of the Projected Chemical Treatment List in R18-9-E826(F), nor will be required to have action levels. The reason behind the special requirements for this sub-category is that while these chemicals are not yet widely regulated, the Department has determined a need to further examine and monitor them at this time. The EPA HA Table contains eight chemicals without health advisory values. Therefore, the Department generated health advisories for those eight chemicals using the same formulas and assumptions EPA used to develop the EPA HA Table, which can be found in the EPA publication, "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)" (*see* NFRM Section 8 below for other studies leveraged in generating these health advisories). It should be noted that when the Department endorses another state drinking water program's notification level or equivalent value the methodology used by the other state is compared and held to the standard of the formulas and assumptions used to develop the EPA HA Table as well.

In the case where a chemical does not have a health advisory in the EPA HA Table, in another state's drinking water program, nor one established by the Department, but does have a Reference Dose (RfD) or Cancer Slope Factor (CSF) in credible peer-reviewed literature or state or Federal databases, the rule requires a consultation between the applicant, the Department and/or the Project Advisory Committee (PAC) to determine a health advisory value. Thereafter, the AWPRA would compare the chemical's projected daily concentration with the determined health advisory. If the concentration exceeds the determined health advisory, the chemical shall become a Tier 2 chemical.

Lastly, in the rare case where a chemical does not have a health advisory in the EPA HA Table, in another state's drinking water program, in the Departmentally-established list, nor a RfD or CSF in credible peer-reviewed literature or state or Federal databases, the rule requires the AWPRA to determine the health risk of the chemical through reasonably appropriate bioanalytical studies and/or bioassays and to propose an action level that is reasonably protective of human health.

R18-9-E827, entitled, "Tier 3 Chemical Control; Performance-Based Indicators" details the requirement of an applicant or permittee to monitor the constituent reduction performance of selected treatment processes at pilot and full-scale treatment trains or to provide an indication of an individual process's failure. Performance-based indicators (pathogens, chemicals or compounds)

are selected and proposed by applicants or permittees along with critical control points along the treatment train, all with the purpose of isolating process performance.

R18-9-E828, entitled, "Pathogen Control" details the two options an applicant or permittee has in controlling pathogens. Pathogen control is largely based on standardized reduction of the three "reference pathogens", which are enteric viruses ("enteric"), Giardia lamblia cysts ("Giardia") and Cryptosporidium oocysts ("Crypto"). Studies show that certain reduction of these three reference pathogens can be used as an indicator of general pathogen reduction. The Department implements a "Standard Approach" to pathogen control at a log reduction of the three aforementioned reference pathogens at 13 log for enteric, 10 log for Giardia and 10 log for Crypto. This approach requires no pathogen site-specific sampling. The other option is the "Site-Specific Approach", which includes a program of site-specific pathogen sampling resulting in customized log reduction values for the reference pathogens.

R18-9-E829 and R18-9-E830 detail the ongoing monitoring and reporting requirements, respectively, while R18-9-E831 details the final requirements related to annual reporting.

- Part F. Technical and Operational Requirements: R18-9-F832 - R18-9-F837

This Part contains the technical and operation requirements of the AWP regulatory program. R18-9-F832, entitled, "Minimum Design Criteria" details the basic or minimum, mandatory requirements of an AWP operation's design, mostly pertaining to the AWTF. Minimum requirements in this section address design mandates concerning chemical and pathogen control, Total Organic Carbon removal, corrosion control, nitrogen management, Advanced Oxidation Processes (AOP), failure response time, cross-connection and minimum requirements for WRFs that are a source for the treated wastewater of an AWTF.

R18-9-F833, entitled, "Technical, Managerial, and Financial Demonstration" details the requirements of an applicant or permittee to demonstrate technical, managerial and financial capacity to operate, manage and fund the project, among other relevant considerations.

R18-9-F834, entitled, "Total Organic Carbon Management" details the requirement of an applicant or permittee to manage Total Organic Carbon (TOC) in one of two ways. The first approach ("Standard Approach") requires the applicant or permittee to maintain a limit of 2 mg/L in the advanced treated water. This approach requires no site-specific TOC sampling. The second approach ("Site-Specific Approach") requires the applicant / permittee to conduct two procedures in order to derive two preliminary TOC values, followed by a comparison of the two values to ascertain the lower value, which ultimately becomes the site-specific TOC value. The two procedures are as follows:

(1) The "Trace Organics Removal Procedure" establishes a preliminary TOC value through the TOC sampling and characterizing of the original drinking water sources that feed water consumption in a service area that is then collected in sewersheds and routed to, and treated by, a WRF that is a source of treated wastewater for an AWTF. A preliminary TOC

value for the Trace Organics Removal Procedure is derived through this process and is detailed in the rule at R18-9-F834(C)(1).

(2) The "DBP Precursor Reduction Procedure" establishes a preliminary TOC value through the conducting and then comparing of two DBP and TOC - based sampling methods (*see* (a) and (b) immediately below). Those methods (in and of themselves) result in two TOC values. The lower of those two TOC values becomes the preliminary TOC value for the DBP Precursor Reduction Procedure. This is detailed further in rule at R18-9-F834(C)(2).

(a) Method 5710 C "Simulated Distribution System Trihalomethanes" (SDS-THM) establishes a TOC value in the advanced treated water. The TOC value is derived by both conducting Standard Method 5710 C and sampling for TOC in the advanced treated water monthly for one year. This results in 12 Total Trihalomethane (THM) values and 12 TOC values. The TOC values are then averaged. Likewise, the THM values are averaged. Thereafter, the THM average is compared to the corresponding Safe Drinking Water Act - Maximum Contaminant Level (MCL) for THM. If the average THM is below the THM MCL, then the *average TOC* for that year becomes the TOC value associated with Method 5710 C - SDS-THM. If the average THM is at or above the THM MCL, then the AWPRA may not use the *average TOC* for that year as the TOC value associated with Method 5710 C - SDS-THM. However, the AWPRA may adjust components of their operation and repeat the sampling above until a 12-month average THM concentration in the advanced treated water is below the corresponding THM MCL. This method is detailed further in rule at R18-9-F834(C)(2)(a).

(b) "CCL5 - DBP Sampling Method" also establishes a TOC value in the advanced treated water. The TOC value is derived through monthly sampling of the advanced treated water for one year of both:

- TOC, and
- only the DBPs that exist in both EPA's "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables" (HA Table) (currently, that includes only Formaldehyde (CAS No. 50-00-0) and N-Nitrosodimethylamine (NDMA) (CAS No. 65-75-9)).

If the average sampling results for either DBP (Formaldehyde or NDMA) are lower than the corresponding health advisory in EPA's HA Table, then the *average TOC* for that year becomes the TOC value associated with Method CCL5 - DBP. If the average sampling results for either DBP (Formaldehyde or NDMA) are at or above the corresponding health advisory in EPA's HA Table, then the AWPRA may not use the *average TOC* for that year as the TOC Value associated with Method CCL5 - DBP. However, the AWPRA may adjust components of their operation and repeat the sampling above until any one DBP (Formaldehyde or NDMA) is below the corresponding health

advisory in EPA's HA Table. This method is detailed further in rule at R18-9-F834(C)(2)(c).

Thereafter, the applicant or permittee determines the lower of the two TOC values associated with Method 5710 C - SDS-THM & Method CCL5 - DBP (listed as "(2)(a)" and "(2)(b)" above, respectively). The lower TOC value becomes the preliminary TOC value for the DBP Precursor Reduction Procedure (listed as "(2)" above) (*See* R18-9-F834(C)(2)(d) for the corresponding rule language).

Then, the permittee determines which of the two preliminary TOC values (from the Trace Organics Removal Procedure and the DBP Precursor Reduction Procedure, listed as "(1)" and "(2)" above) is lower. That value becomes the AWPRA's site-specific TOC Limit (*See* R18-9-F834(C)(3) for the corresponding rule language).

Upon issuance of a permit and AWTF operation, a permittee may switch between the two TOC Management approaches (Standard or Site-Specific) each calendar year (*See* R18-9-F834(A) for the corresponding rule language).

Also of note, ADEQ should in the future update the TOC rule when new versions of "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables" are established (such as the "CCL 6" list or a new version of the Health Advisories Table). At that time, ADEQ should additionally update the DBPs to be sampled pursuant to subsection (C)(2)(c)(i).

R18-9-F835, entitled, "Full Scale Verification" details the requirements of verifying an AWTF's treatment train performance once built. Under the final rules, an applicant or permittee could be issued a limited permit and perform full-scale verification thereafter, through a compliance schedule item (*see* R18-9-C816(E) and R18-9-C818). Notably, the rule allows an applicant to conduct the Pilot Study and Full-Scale Verification simultaneously if the applicant chooses to build to full-scale during what would otherwise be a pilot facility build. If the applicant chooses this pathway, the rule requires a) a consultation with the Department, b) the development and submission of a "Hybrid Pilot and Full-Scale Verification Plan" to the Department for review and comment, and c) the submission of the "Hybrid Pilot and Full-Scale Verification Plan" and "Hybrid Pilot and Full-Scale Verification Report" to the Department for approval under the permit application. This optionality reflects the additional flexibility incorporated into the rule for various types of planned facilities by providing a reasonable construction pathway for facilities that opt to build full-scale at this stage.

R18-9-F836, entitled, "Operations Plan" details the requirements of an operations plan an applicant or permittee must develop for Departmental approval and follow throughout permitted operations.

R18-9-F837, entitled, "Vulnerability Assessment" details the requirements of a vulnerability assessment that must be conducted by the applicant for submission and approval by the Department for the AWP project for the purpose of identifying areas and processes with a potential to be vulnerable to attack, sabotage, or disruption.

***Further Explanation*:**

Further explanation on the program can be found in the Department's summary of the final program, known as the "Roadmap", available online at https://static.azdeq.gov/wqd/awp/roadmap.pdf. Also, the Department has responded to and published, online, an assortment of technical questions, addressing stakeholder concerns and clarifying decisions in the design of the regulatory program, under the AWP Rulemaking agency website at https://azdeq.gov/awp-resources. Other explanatory resources are available at the rulemaking's general webpage at https://azdeq.gov/awp-rulemaking.

***Changes to Existing Regulations*:**

This NFRM includes in its scope the removal of R18-9-A701 and R18-9-E701 (*see* "Evolution of AWP in Regulations" subsection above) and the amending of R18-9-B201 and R18-9-B702. R18-9-B201(E) provides that "[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." In preserving the general prohibition, but excepting AWP projects, the following will be added as a second sentence in R18-9-B201(E), "[a] person may only create and maintain a connection between sewage treatment facilities, advanced water treatment facilities and potable water supply under an Advanced Water Purification permit issued pursuant to Article 8 of this Chapter." R18-9-B702(H) lists prohibited activities for reclaimed water usage under Article 7 (Use of Recycled Water). Under the existing rule, subsection R18-9-B702(H)(2) prohibits "[p]roviding water for human consumption from a reclaimed water source *except as allowed in Part E of this Article*" (emphasis added). Since R18-9-E701, which is the sole rule in "Part E", is removed by this rulemaking, it is appropriate to remove the corresponding language in the prohibition in subsection R18-9-B702(H)(2) for uniformity.

***Stakeholder Engagement*:**

ADEQ embarked on a significant stakeholder engagement process at two informal rulemaking stages: 1) AWP program framework and guiding principle development; and 2) AWP draft rule review and comments.

AWP program framework and guiding principle development:

Immediately following the effective date of A.R.S. § 49-211 in September 2022, ADEQ identified several stakeholder groups for engagement surrounding AWP program development and adoption and convened a Technical Advisory Group (TAG) (*see* ADEQ, Technical Advisory Group, https://azdeq.gov/awp-tag) in October 2022. The TAG consisted of experts and representatives from the following groups: academia; small, medium, and large utilities; regulatory agencies; and consulting engineers and scientists. The TAG routinely met twice per month - 114 meetings - and, on July 14, 2023, delivered to ADEQ the "Advanced Water Purification (AWP): Technical Advisory Group (TAG) Recommendations" (Technical Advisory Group, Advanced Water Purification (AWP): Technical Advisory Group (TAG) Recommendations, July 14, 2023, https://static.azdeq.gov/wqd/awp/tag_recommendations.pdf).

In 2023, ADEQ initiated in-depth stakeholder engagement, comprising more foundational data upon which the AWP program was

designed. ADEQ, through the assistance of HMA Public Relations and BrandOutlook, conducted an analysis of public perceptions surrounding AWP with the goal of gathering informative data for the development of the program rules. The objectives of the initiative included: understanding perceptions about the urgency of the water situation in Arizona; determining the top concerns and efforts made to alleviate water issues in Arizona; determining what people think about AWP; gathering information about barriers to implementing AWP; understanding best methods of communicating AWP to the public; and gaining feedback on the role of ADEQ in presenting AWP as a viable solution to water needs to municipalities and end users. The initiative included two phases: qualitative stakeholder interviews and a quantitative survey of Arizonans.

Under Phase One, ADEQ engaged with representatives from leading entities and organizations comprising eight key stakeholder groups including: utilities; government; academia; policy; commercial; community; agriculture; and healthcare. A summary of the key findings are as follows:

- Participants agreed that Arizona faces water challenges both now and in the future;
- Participants indicated general awareness of current water initiatives to mitigate the water issues in Arizona;
- Participants indicated disparate knowledge of AWP as a water supply option;
- Key top of mind benefits of AWP included water supply, economics, and the environment;
- Key top of mind drawbacks of AWP included the 'yuck' factor, trust issues, skepticism, and cost.
- There are clear opportunities to shift perceptions;
- The general public should be engaged early in the adoption effort;
- Sophisticated water stakeholders are willing and ready to adopt AWP but recognize the need for flexibility; and
- ADEQ has the responsibility to engage in a holistic adoption approach (*see* ADEQ, Final Report - Understanding Perceptions and Barriers to Direct Potable reuse (DPR) Adoption, Phase 1 - Qualitative Research with Stakeholders, April 10, 2023, https://static.azdeq.gov/wqd/awp/dpr_rpt_23.pdf).

Under Phase Two, ADEQ solicited a blind survey of 1,314 Arizona residents across 13 counties. A summary of the key findings are as follows:

- Residents indicated broad concern about water supply now and in the near future;
- Residents indicated personal water consumption is primarily filtered or bottled;
- Residents were receptive to AWP as a viable option to mitigate water supply concerns, with 70% indicating they were "somewhat" or "very likely" to drink AWP water;
- Residents indicated such barriers to AWP adoption as skepticism regarding safety, 'yuck' factor, and cost; and
- Residents indicated that educational outreach can overcome barriers to AWP adoption (*see* ADEQ, Final Report - 2024 Quantitative Research Regarding Advanced Water Purification (AWP), May 31, 2024,

https://static.azdeq.gov/wqd/awp/rpt_24.pdf).

Further outreach included over a dozen nation-wide presentations, discussions, teaching events, and interviews on AWP program components (*see* ADEQ, Outreach Participation, https://azdeq.gov/awp-outreach). Additionally, ADEQ has developed various public-facing resources such as:

- Fact Sheet (*see* ADEQ, Fact Sheet, What is Advanced Water Purification?, https://static.azdeq.gov/wqd/dpr/fs.pdf);
- Infographic (*see* ADEQ, Advanced Water Purification, https://static.azdeq.gov/wqd/awp/infographic.pdf);
- FAQs related to AWP and public water systems (*see* ADEQ, Public Water Systems FAQs, https://azdeq.gov/awp-faqs-PWS); and
- Comprehensive AWP webpage including information surrounding what AWP is, why it's important for Arizona, how it works, frequently asked questions, and an explainer video (*see* ADEQ, Advanced Water Purification, https://azdeq.gov/awp).

These myriad stakeholder engagement efforts were critical in ADEQ's development and public release of the "Advanced Water Purification: Proposed Program Roadmap" ("Roadmap") in November 2023 (*see* ADEQ, Advanced Water Purification Proposed Program Roadmap, November 2023, https://static.azdeq.gov/wqd/awp/roadmap.pdf). The Roadmap synthesized TAG recommendations and ADEQ's own technical expertise as well as accounted for stakeholder perceptions and feedback. The Roadmap summarized and explained the AWP program's key elements in an effort to assist stakeholders in future planning for AWP implementation, support public education and awareness, and provide transparency on ADEQ's intention and critical pathway to rulemaking on AWP.

Following the release of the Roadmap in November 2023, ADEQ held a 30-day public comment period to gather input and feedback from stakeholders and interested parties. A dozen substantial comments were received during the comment period, including comments from such stakeholders as: City of Flagstaff; City of Phoenix; Scottsdale Water; Tucson Water; and Water Reuse Arizona. ADEQ carefully reviewed and considered all comments received, and issued a cumulative response to comments on July 8, 2024 (*see* ADEQ, Advanced Water Purification Proposed Program Roadmap ADEQ Response to Comments, July 8, 2024, https://static.azdeq.gov/wqd/awp/rtc.pdf).

AWP draft rule review and comments:

ADEQ released the draft rule of the AWP program - including draft programmatic rules in 18 A.A.C. Chapter 9, draft licensing time frame rules in 18 A.A.C. Chapter 1, and draft fee rules in 18 A.A.C. Chapter 14 - on July 9, 2024 (*see* ADEQ, Advanced Water Purification, https://azdeq.gov/awp-rulemaking). Following the release of the draft rules, ADEQ held a 30-day public comment period to, once again, gather input and feedback from stakeholders and interested parties. During this period, ADEQ organized and facilitated two meetings, a Tribal Listening Session on July 31, 2024, and a Stakeholder Meeting on August 1, 2024.

ADEQ received 28 comments during this period, representing large stakeholder groups as well as interested individuals. All comments were critically analyzed and utilized throughout ADEQ's proposed rule drafting process between July and September 2024. ADEQ published responses to those comments in mid-October on its website.

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:

ADEQ reviewed hundreds of studies relevant to the development of the AWP program. Those studies informed and shaped the program and were relied upon to various degrees. ADEQ evaluates and justifies usage of the data in the studies relied upon in its "*Advanced Water Purification Proposed Program Roadmap"* ("Roadmap"). The public may review the Roadmap online at the following website: https://static.azdeq.gov/wqd/awp/roadmap.pdf. The public may review a list of the studies relied upon as cited references in Section 7 of the Roadmap or may obtain copies of any study from the Department by request. Requests can be submitted to the Department by email at reuserulemaking@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Since the Roadmap was released, ADEQ has relied upon the following additional studies in further development of the program, which are listed below and on file with the agency:

- ***Standard Methods for the Examination of Water and Wastewater, 24th ed.:***

  Summary: This book of methods is a comprehensive and standard text for water quality analysis used by researchers and regulators to assess properties of water and wastewater samples.

  Study Resource: ADEQ incorporated a number of standard methodologies by reference into the rule requirements for the AWP program. This is the most up-to-date and comprehensive resource for measuring the biological, chemical and physical characteristics of water samples and offers guidance to choose among available methods for specific elements and compounds. In this rulemaking, it is being used to define an approach for TOC analysis and for analysis of water quality samples.

  Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

  Reference: American Public Health Association, American Water Works Association, Water Environment Federation. Lipps WC, Braun-Howland EB, Baxter TE, eds. Standard Methods for the Examination of Water and Wastewater. 24th ed. Washington DC: APHA Press; 2023.

- ***Fate of Pharmaceuticals and Personal Care Products Through Municipal Wastewater Treatment Processes:***

Summary: This is a Water Environment Research Foundation book addressing removal of endocrine disrupting compounds, pharmaceuticals, and personal care products by full-scale wastewater treatment plants.

Study Resource: ADEQ incorporated the study's recommendations about Solids Retention Time (SRT) of 15 days to achieve consistent removal above 80% of endocrine disrupting compounds, pharmaceutical and personal care products typically occurring in wastewater.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: Stephenson, R. and Oppenheimer, Joan. Fate of Pharmaceuticals and Personal Care Products Through Municipal Wastewater Treatment Processes; 2007.

- ***Chemical Update Worksheet:***

  Summary: This is a study performed by the State of Michigan Department of Environmental Quality for Rule

  Study Resource: ADEQ incorporated the Reference Dose or Oral cancer slope factors (CSF) presented in this study for Benz[a]anthracene, Benzo[b]fluoranthene, Benzo[g,h,i]perylene, Chrysene, Dimethyl phthalate, Indeno[1,2,3,-c,d]pyrene and Phenanthrene to establish Health Advisories. These compounds don't have a Health Advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

  Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

  References:

  - Michigan DEQ. Chemical update worksheet for Benz(a)anthracene [CASRN = 56-55-3]. 2015. Accessed 10/07/2024.
  - Michigan DEQ. Chemical update worksheet for Benzo[b]fluoranthene [CASRN = 205-99-2]. 2015. Accessed 10/07/2024.
  - Michigan DEQ. Chemical update worksheet for Benzo[g,h,i]perylene [CASRN = 191-24-2]. 2015. Accessed 10/07/2024.
  - Michigan DEQ. Chemical update worksheet for Chrysene [CASRN = 218-01-9]. 2015. Accessed 10/07/2024.
  - Michigan DEQ. Chemical update worksheet for Dimethyl phthalate [CASRN = 131-11-3]. 2015. Accessed 10/07/2024.
  - Michigan DEQ. Chemical update worksheet for Indeno[1,2,3,-c,d]pyrene [CASRN = 193-39-5]. 2015.

Accessed 10/07/2024.

- Michigan DEQ. Chemical update worksheet for Phenanthrene [CASRN = 85-01-8]. 2015. Accessed 10/07/2024.

- ***Toxicity criteria on chemicals evaluated by COEHHA*:**

  Summary: This is a study performed by the California Office of Environmental Health Hazard Assessment for Rule (2015). Access date: 10/07/2024

  Study Resource: ADEQ incorporated the Oral cancer slope factors (CSF) calculated in this study for Benzo[k]fluoranthene. This compound does not have a Health Advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

  Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

  Reference: California Office of Environmental Health Hazard Assessment (1987). Benzo[k]fluoranthene [CASRN = 207-08-9]. Access date: 10/07/2024.

- ***California Division of Drinking Water***:

  Summary: This is a study performed by the California Division for Drinking Water for Rule (2001). Access date: 10/07/2024.

  Study Resource: ADEQ incorporated the Notification Level of 0.33 mg/L established for Trimethylbenzene (1,2,4-). This compound does not have a Health Advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

  Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

  Reference: California Division of Drinking Water (2001). Trimethylbenzene (1,2,4-) [CASRN = 95-63-6]. Access date: 10/07/2024.

- ***Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health***:

  Summary: This is a methodology published by the EPA for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000). Access date: 01/15/2025.

  Study Resource: ADEQ utilizes this methodology in its endorsement of Departmentally-Based health advisories and other state drinking water notification levels or equivalents in the Tier 2 rule.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)". Access date: 01/15/2025.

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

This Economic, Small Business, and Consumer Impact Statement has been prepared by ADEQ in conjunction with contracted economic and AWP technical experts to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of

water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces

impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in

the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration

of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program. This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			

Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).	Minimal	
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless,

in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-

dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports

between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DPR regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals

used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade

of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.

- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

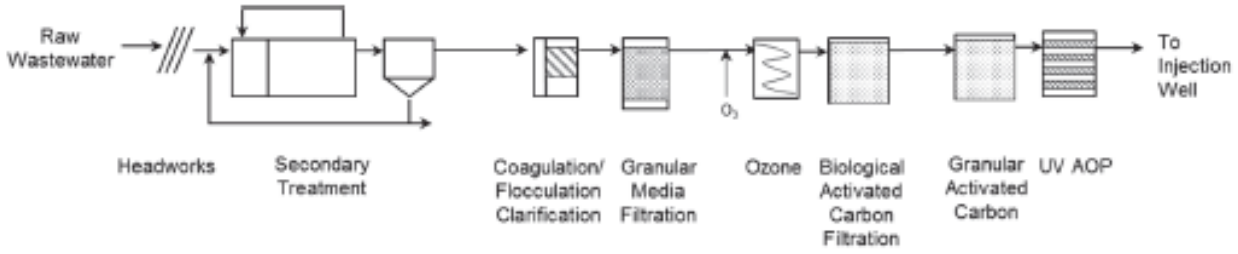
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

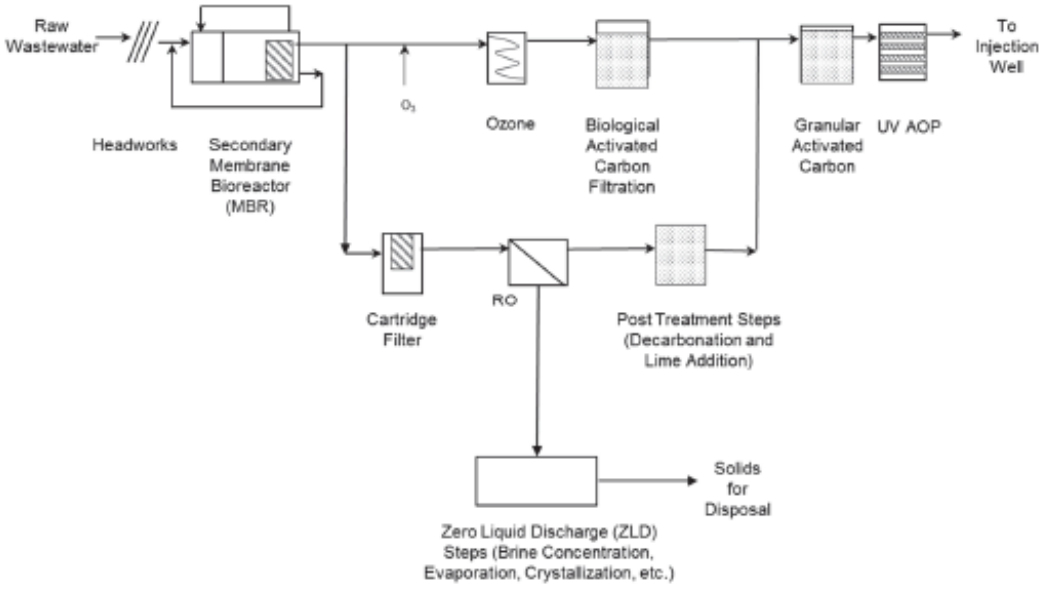
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



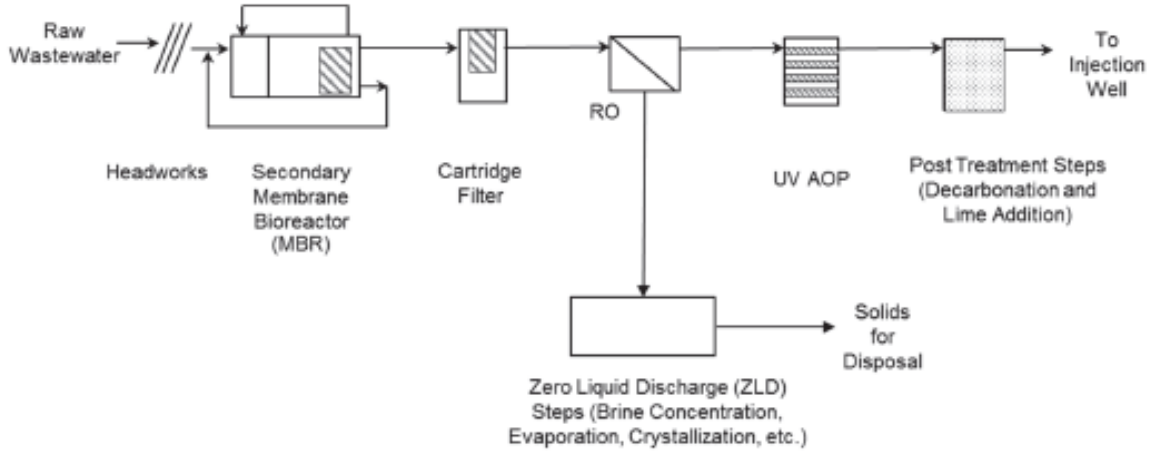
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390
Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and oman periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management

requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I)

consumptive use.

- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic

health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of

purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from

groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new

opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly

positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program. As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources

through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs.

ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new

source of potable water for Arizona's water users.

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

R18-9-A801(25) - Definitions

- In the definition of "Constituent of Concern", removed the words "target chemicals in" and added the word "chemicals" for clarity.

R18-9-A801(76) - Definitions

- In the definition of "Raw wastewater", added the word "centralized" in order to make the distinction between treatment that occurs at a discharger's site (such a pretreatment or in the collection system itself) and the centralized treatment at a Water Reclamation Facility.

R18-9-A801(92) - Definitions

- Updated the definition to match the language in the Tier 1 rule, R18-9-E825, cross-referencing A.A.C. Title 18, Chapter 4, Article 1 which incorporates by reference the Code of Federal Regulations (CFR) Title 40, Chapter I, Subchapter D, Part 141.

R18-9-A802(A) - Program Review; Incorporation by Reference; Quality Assurance/Quality Control Methodologies

- Updated the scope of when ADEQ shall review the AWP program to incorporate all significant updates to Tier 2 health advisory values, not just those established by the Department, but the health advisory values established: by EPA; by an ADEQ-approved state drinking water program health advisory notification level or equivalent; or by the Department.

R18-9-A802(B)(10) - Program Review; Incorporation by Reference; Quality Assurance/Quality Control Methodologies

- Removed the incorporation by reference citation for the Code of Federal Regulations (CFR) Title 40, Chapter I, Subchapter D, Part 141 because the final rules cross-reference A.A.C. Title 18, Chapter 4, Article 1 - R18-4-102 - which, itself, incorporates by reference 40 CFR 141. Therefore, including a version of it in the AWP material is not necessary and potentially conflicting if one is updated independently of the other.

R18-9-B804(A)(1) - Advanced Water Purification Operator Certification

- Deleted the definition of "Absence" and renumbered (A), accordingly, in order to account for changes in subsection (D) requiring an operator in direct responsible charge to be onsite at least two full shifts per day (see explanation of changes to subsection (D) below), which rendered the definition of "absence" unnecessary.

R18-9-B804(A)(5) - Advanced Water Purification Operator Certification

- Replaced "the person" with "an AWP operator" in the definition of "Direct responsible charge" in order to further clarify

that an operator in direct responsible charge is an AWP operator.

R18-9-B804(A)(6) - Advanced Water Purification Operator Certification

- Added definition for "Direct responsible charge proxy" in order to address stakeholder concerns (see NFRM Section 12) while preserving the Department's responsibility to protect public health. The definition clarifies who bears responsibility for the operations of the facility when the operator in direct responsible charge is not onsite.

R18-9-B804(A)(8) - Advanced Water Purification Operator Certification

- Updated the definition of "Onsite" to clarify that it means "physically present at" an AWPRA facility. Additionally, the remainder of the definition was cleaned-up to remove passive language and clarify the noun.

R18-9-B804(A)(11) - Advanced Water Purification Operator Certification

- Replaced "the person" with "an AWP operator" in the definition of "shift operator" in order to further clarify that a shift operator is an AWP operator.

R18-9-B804(A)(12) - Advanced Water Purification Operator Certification

- Added definition for "shift" in accordance with new language added to subsection (D) (see changes to subsection (D) below).

R18-9-B804(D)(1) - Advanced Water Purification Operator Certification

- Updated the General Requirements by clarifying the requirements for operators in direct responsible charge and adding new requirements for an operator in direct responsible charge proxy in order to address stakeholder concerns (see NFRM Section 12) while preserving the Department's responsibility to protect public health. First, the Department clarified the scope of the facilities that are required to have AWP operators pursuant to R18-9-B804 and subsection (D), by providing that "[a]ll facilities receiving treatment credit pursuant to R18-9-E828 [shall be] operated by AWP operators" (R18-9-B804(D)(1)(a)). Additionally, the Department added minimum "onsite" requirements for an operator in direct responsible charge in lieu of the "absence" definition which previously achieved the same outcome, i.e. the operator in direct responsible charge onsite for at least two full shifts per day, but did so implicitly instead of explicit, which is more appropriate. Therefore, language was added in (D)(1)(b) to state that "all facilities receiving treatment credit pursuant to R18-9-E828 [must] have a full-time operator in direct responsible charge onsite for at least two full shifts per day". Furthermore, language was added in (D)(1)(c) and (d) pursuant to the addition of an "operator in direct responsible charge proxy" establishing the minimum requirements for a "proxy" and an operator in direct responsible charge when a proxy is onsite in their stead. This ensures that all facilities that receive pathogen credits - which includes all AWTFs and some water reclamation facilities - are

operated by AWP operators pursuant to the general requirements in subsection (D).

The proposed language reads,

(D) General Requirements.

(1) A facility owner shall ensure that at all times:

(a) A facility has an on-site operator in direct responsible charge who has both a Grade 4 drinking water treatment certification and an AWP operator certification,

(b) An AWP operator makes all decisions about operational process control or system integrity regarding water quality or water quantity that affects public health. An AWPRA administrator who is not an AWP 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,

(c) In the absence of the AWP operator in direct responsible charge, the AWP operator in charge of the AWTF is the shift operator,

(d) All AWTFs shall have an AWP operator in direct responsible charge,

(e) An AWTF shall be operated by AWP operators,

(f) Operators in direct responsible charge and shift operators operating an AWTF must be certified as AWP operators,

(g) All critical control points shall be operated by an AWP operator, and

(h) The names of all current AWP operators shall be reported to the Department as a component of the Operations Plan submitted pursuant to R18-9-F836.

The final language reads,

(D) General Requirements.

(1) An AWPRA shall ensure all of the following:

(a) All facilities receiving treatment credit pursuant to R18-9-E828 are operated by AWP operators,

(b) All facilities receiving treatment credit pursuant to R18-9-E828 have a full-time operator in direct responsible charge onsite for at least two full shifts per day,

(c) All facilities receiving treatment credit pursuant to R18-9-E828 have an operator in direct responsible charge, or their proxy, onsite at all times during operation,

(d) When any facilities receiving treatment credit pursuant to R18-9-E828 is operated by a direct responsible charge proxy, an operator in direct responsible charge must be reasonably available to provide immediate direction telephonically, if necessary,

(e) An AWP operator makes all decisions about operational process control or system integrity regarding water quality or water quantity that affects public health,

(f) An AWPRA administrator who is not an AWP 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,

(g) All critical control points at any facility receiving treatment credit pursuant to R18-9-E828 are operated by an AWP operator, and

(h) The names of all current AWP operators are reported to the Department as a component of the Operations Plan submitted pursuant to R18-9-F836.

R18-9-B804(D)(2) - Advanced Water Purification Operator Certification

- Added new language providing the option for an AWPRA to submit a waiver request to supplant the operations requirement in (D)(1)(b) with an alternative requirement, as approved by the Department and set forth in the operations plan, in order to account for stakeholder concerns surrounding operator requirements (see NFRM Section 12) while upholding the Department's responsibility to protect human health.

R18-9-B804(D)(3) - Advanced Water Purification Operator Certification

- Added new language pursuant to the waiver request in subsection (D)(2) (explained above) setting the standard for the Department's review and grant of the waiver request, which is that the operator in direct responsible charge is not "required to be onsite for at least two full shifts per day, but shall be able to monitor operations over the facility onsite within the period specified in the operations plan". This language enables the Department to grant an alternative operations plan for the operator in direct responsible charge (upon a satisfactory showing in subsection (D)(2)) subjecting the AWPRA to the requirements as agreed upon in the operations plan, in lieu of the requirement in rule.

R18-9-B804(D)(5) - Advanced Water Purification Operator Certification

- Updated language to be more clear, from "ceases operation of a facility" to "ceases to operate a facility".

R18-9-B804(D)(7) - Advanced Water Purification Operator Certification

- Removed the subsection after determination that it was redundant given the updates to subsection (L) of R18-9-B804

(explained further below).

R18-9-B804(D)(8) - Advanced Water Purification Operator Certification

- Removed the language around the water reclamation facility operation relative to the updates made to subsection (D) which clarify that all water reclamation facilities providing treated wastewater to an AWTF, credited with pathogen removal under R18-9-E828, are required to have AWP operators pursuant to R18-9-B804 and subsection (D). Therefore, the old language in (D)(8) conflicted with the updates and the rule benefits from additional clarity with its removal.

R18-9-B804(K)(5)(d) - Advanced Water Purification Operator Certification

- Updated the language to fix an error which previously had "Grade 3" instead of "Grade 4".

R18-9-B804(K)(6)(e) - Advanced Water Purification Operator Certification

- Added a catch-all provision to the list of options for gaining advanced water treatment qualifying experience in order to provide future deference to the Department in acknowledging experience as situations emerge in the future.

R18-9-B804(L)(1) - Advanced Water Purification Operator Certification

- Updated language to clarify that AWP treatment credits may be received for pathogen removal under R18-9-E828.

R18-9-B804(L)(2) - Advanced Water Purification Operator Certification

- Updated language in subsections (L)(2)(a) and (b) to modify the requirements for the classification of wastewater treatment facilities and collection systems supplying an AWTF in response to stakeholder concerns (see NFRM Section 12) about implementability and in consideration of ADEQ's responsibility to protect human health. The updated language in (a) only requires a wastewater treatment facility that is receiving AWP treatment credits for pathogen removal, that supplies an AWTF, to be operated by an AWP operator and an operator certified at the appropriate grade for the class of facility under Title 49, Chapter 5, Article 1. The language ensures that a wastewater treatment facility receiving AWP credits is properly staffed by the most qualified operators. The updated language in (b) removes the Grade 4 requirement for collection systems and only requires that they be classified in accordance with R18-5-114.

R18-9-C813(D) - Applicant Pathways Depending on National Pretreatment Program Applicability

- Added subsection D in order to allow for submission functionality when an applicant chooses to build a pilot facility to full-scale and develops a Hybrid Pilot and Full-Scale Verification Plan.

R18-9-C815(A) - Pilot Study

- The language in subsection (A) was revised in order to allow necessary components of the Pilot Study and the Full Scale Verification rules to be required when an applicant chooses to build a pilot facility to full-scale and develops a Hybrid Pilot and Full-Scale Verification Plan. The previous language allowed Full-Scale Verification requirements to supplant Pilot

Study requirements when an applicant chooses to build a pilot facility to full-scale, which is not appropriate.

The proposed language reads,

(A) An AWPRA applicant shall develop a Pilot Study Plan and conduct piloting on a pilot treatment train.

(1) If an AWPRA builds a pilot facility to full-scale, an AWPRA may conduct full-scale verification pursuant to R18-9-F835 in lieu of the piloting requirements in this section. For the purposes of the permit application pursuant to R18-9-C816, the Full-Scale Verification Plan and Report shall be submitted instead of the Pilot Study Plan and Pilot Study Report.

The final language reads,

(A) An AWPRA applicant shall develop a Pilot Study Plan and conduct piloting on a pilot treatment train.

(1) If an AWPRA builds a pilot facility to full-scale, the AWPRA applicant may, instead, opt to conduct piloting and full-scale verification simultaneously. If the AWPRA pursues this option, the AWPRA shall:

(a) Consult with the Department, and

(b) Develop and submit a Hybrid Pilot and Full-Scale Verification Plan to the Department for review and comment prior to conducting piloting and full scale verification under this section, R18-9-F835 and other requirements which are previously determined through consultation with the Department, and

(c) For the purposes of the permit application pursuant to R18-9-C816, submit the Hybrid Pilot and Full-Scale Verification Plan and a Hybrid Pilot and Full-Scale Verification Report in lieu of the submission requirements at R18-9-C816(A)(2)(g) and (h).

R18-9-C815(B)(4) - Pilot Study

- The language in subsection (B)(4) was revised for clarity with respect to the submission requirements of National Pretreatment Program AWPRAs and Non-National Pretreatment Program AWPRAs.

The proposed language reads,

(4) The Pilot Study Plan may include the Initial Source Water Characterization Report prepared pursuant to R18-9-

C814(E), if finalized prior to piloting.

The final language reads,

(4) The Initial Source Water Characterization Report prepared pursuant to R18-9-C814(E) shall be submitted as follows:

(a) A Non-National Pretreatment Program AWPRA applicant shall submit the Initial Source Water Characterization Report as a component of the Pilot Study Plan, and

(b) A National Pretreatment Program AWPRA applicant may submit the Initial Source Water Characterization Report as a component of the Pilot Study Plan, or otherwise shall submit the Initial Source Water Characterization Report as a component of the AWP permit application prepared pursuant to R18-9-C816.

R18-9-C816(A)(2)(h) - Permit Application

- Updated language to bring clarity to if & when a Pilot Study Report, Full Scale Verification Report or a Hybrid Pilot and Full Scale Verification Report may be submitted as part of a permit application.

R18-9-C817(C)(4) - Demonstration Permit

- Updated language to more clearly align with other demonstration permit requirements in response to a stakeholder comment (see NFRM Section 12).

R18-9-C817(K) - Demonstration Permit

- Added subsection (K) to more clearly align the demonstration permit rule with the AWP permit rule (R18-9-C816(G)).

R18-9-E824(B)(4)(b)(8) - Enhanced Source Control

- Fixed a typo to the word “include”.

R18-9-E824(E) - Enhanced Source Control

- Updated the language by separating out the information into two subsections under (E), further clarifying which representatives shall form the source control committee.

R18-9-E825 - Tier 1 Chemical Control; Maximum Contaminant Levels

- Updated the language to link to A.A.C. Title 18, Chapter 4, Article 1 which incorporates by reference the Code of Federal Regulations (CFR) Title 40, Chapter I, Subchapter D, Part 141.

R18-9-E826(D)(5) - Tier 2 Chemical Control; Advanced Water Purification-Specific Chemicals

- Revised language in order to make more clear which “notification levels” are endorsed by ADEQ and how they are endorsed.

The proposed language reads,

(5) For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above but do have a

drinking water health advisory "notification level" in another state's drinking water program:

(a) Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the following corresponding state drinking water health advisory notification level: Trimethylbenzene (1,2,4-) (CAS No. 95-63-6): 0.33 mg/L.

(b) If the projected daily concentration exceeds the health advisory notification level, the chemical shall be a Tier 2 chemical.

The final language reads,

(5) For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above but do have a drinking water health advisory notification level or equivalent from a state drinking water program that was developed using a method that ADEQ approves and lists under subsection (a), below:

(a) Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the following corresponding state drinking water health advisory notification level or equivalent:

(i) Trimethylbenzene (1,2,4-) (CAS No. 95-63-6): 0.33 mg/L),

(ii) Reserved.

(b) If the projected daily concentration exceeds the health advisory notification level, the chemical shall be a Tier 2 chemical.

R18-9-E826(D)(9) - Tier 2 Chemical Control; Advanced Water Purification-Specific Chemicals

- Updated language to include alert levels, explicitly capturing ADEQ's intention for applicants to submit both action levels and alert levels to the Department following the Tier 2 analysis.
- Added subsection (e) to specifically address how an applicant establishes alert levels.

R18-9-F832(E)(4) - Minimum Design Requirements

- Updated language from "off-spec treated wastewater" to "treated off-spec wastewater" for clarification.

R18-9-F833(A)(1)(c) - Technical, Managerial, and Financial Demonstration

- Updated the monitoring plan requirement to an ongoing monitoring plan rather than a monitoring plan for initial source water characterization because the elements prescribed in the plan are requirements of the AWTF's technical capacity, not just relevant to a one-time monitoring effort during the initial source water characterization period.

R18-9-F834(C), (C)(1), (C)(2) and (C)(3) - Total Organic Carbon Management

- Language revised in order to address a lack of clarity reported by stakeholders. Underlined text below represents new language added to R18-9-F834(C), (C)(1), (C)(2) and (C)(3) in the final rule; whereas, ~~stricken~~ language below represents

language from the proposed rule removed in the final rule.

(C) Site-Specific Approach or Limit. An AWPRA shall perform the two procedures described in subsections (C)(1) and (2) below. The site-specific TOC limit shall be the lower of the two preliminary TOC values obtained from these procedures.

(1) Trace Organics Removal Procedure. The AWPRA shall submit a plan to characterize the TOC of all original drinking water sources that feed the collection system(s) that are used by the AWTF as a treated wastewater source. This plan shall be submitted for approval by the Department as part of the Pilot Study Plan pursuant to R18-9-C815(B)(3) and (D) and again in the permit application as part of the R18-9-C816(A)(2)(d) submittals.

(a) Original Drinking Water TOC Characterization requires, but is not limited to, the following:

(i) Use of Departmentally approved TOC sampling locations,

(ii) Sampling for a minimum of one year,

(iii) Sampling at weekly intervals,

(iv) Calculation of the TOC at the 50^{th} percentile (median), 75^{th} percentile, and 95^{th} percentile,

(v) Establishment of a TOC alert level at the 75^{th} percentile, and

(vi) Establishment of the TOC action level at 1.5×95^{th} percentile.

(b) Upon the characterization of TOC in the original drinking water and approval from the Department, an AWPRA shall monitor for TOC in the advanced treated water using continuous online analyzers.

(c) For the purposes of this subsection, the preliminary TOC value in mg/L for the Trace Organics Removal Procedure is the action level established in subsection (C)(1)(a)(vi) above.

(2) Disinfection Byproducts Precursor Reduction Procedure.

(a) Method 5710 C: “Simulated Distribution System Trihalomethanes (SDS - THM)”

(i) The AWPRA shall apply 5710 C Method “Simulated Distribution System Trihalomethanes (SDS - THM)” to the advanced treated water ~~to establish a TOC value~~ in order to determine the total trihalomethane (THM) concentration.

(ii) Testing and sampling shall be conducted monthly for one year.

(iii) The AWPRA shall simultaneously sample for TOC in mg/L in the advanced treated water monthly for one year.

(iv) If the average THM concentration is below the corresponding MCL for THM pursuant to R18-9-E825, the average TOC value from subsection (C)(2)(a)(iii) is the Method 5710C TOC value for the purposes of comparison in subsection (C)(2)(d) below.

(v) If the average THM concentration is at or above the corresponding THM MCL pursuant to R18-9-E825, the AWPRA may not use the average TOC value from subsection (C)(2)(a)(iii) as the Method 5710C TOC value. The AWPRA may adjust components of their operation and repeat the steps in subsection (C)(2)(a) until an average THM concentration in the advanced treated water is below the corresponding THM MCL pursuant to R18-9-E825.

(b) The AWPRA shall submit the following information on the conditions at the time Method 5710 C from subsection (C)(2)(a) above was conducted to the Department as part of the Pilot Study Report pursuant to R18-9-C815(D) and again in the permit application as part of the R18-9-C816(A)(2)(d) submittals:

(i) Temperature,

(ii) pH,

(iii) Disinfectant dose,

(iv) Residual and reaction time within the distribution system, and

(v) Other standard conditions as described in Section 5710 B "Trihalomethane Formation Potential (THMFP)".

(c) CCL5 - Disinfectant Byproducts Sampling Method.

(i) The AWPRA shall sample for ~~only~~ the following disinfection byproducts in the advanced treated water, Formaldehyde (CAS No. 50-00-0) and N-Nitrosodimethylamine (NDMA) (CAS No. 65-75-9), which are the only disinfection byproducts that exist in both EPA's "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables" ~~in the advanced treated water~~.

(ii) ~~If the sampling results in a value for any one DBP that is at or below the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", that value is the TOC value to be used in the comparison in subsection (C)(2)(d) below~~Sampling shall be conducted monthly for one year.

(iii) ~~Sampling shall be conducted monthly for one year~~The AWPRA shall simultaneously sample for TOC in mg/L in the advanced treated water monthly for one year.

(iv) If the average sampling results in a value for any one DBP is below the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", the average TOC value from subsection (C)(2)(c)(iii) is the CCL5 DBP TOC value for the purposes of comparison in subsection (C)(2)(d) below.

(v) If the average sampling result for any one DBP is at or above the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", the AWPRA may not use the average TOC value from subsection (C)(2)(c)(iii) as the CCL5 DBP TOC value. The AWPRA may adjust components of their operation and repeat the steps in subsection (C)(2)(c) until the average sampling results from any one DBP is below the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

(d) The lower of the two resultant TOC values in mg/L derived from the methods described in subsections (C)(2)(a) and (C)(2)(c) above is the preliminary TOC value for the Disinfection Byproducts Precursor Reduction Procedure.

(3) AWPRA's Site-Specific TOC Approach or Limit. The lower of the two preliminary TOC values in mg/L derived from the two procedures in (C)(1) and (2) above is the AWPRA's site-specific TOC limit.

R18-9-F835(A)(1) - Full-Scale Verification

- The language was revised in order to allow necessary components of the Pilot Study and the Full Scale Verification rules to be required when an applicant chooses to build a pilot facility to full-scale and develops a Hybrid Pilot and Full-Scale Verification Plan. The previous language allowed Full-Scale Verification requirements to supplant Pilot Study

requirements when an applicant chooses to build a pilot facility to full-scale, which is not appropriate.

The proposed language reads,

(A) An AWPRA applicant shall conduct Full-Scale Verification of the AWTF. The AWPRA applicant shall develop a Full-Scale Verification Plan for submission to the Department and shall perform full-scale verification testing of the AWTF in compliance with the Plan.

(1) If an AWPRA applicant builds a pilot facility to full-scale, the AWPRA applicant may conduct full-scale verification in lieu of the piloting requirements in R18-9-C816.

(2) If conducting full-scale verification in lieu of the piloting requirements in R18-9-C816:

(a) A Non-National Pretreatment Program AWPRA applicant shall submit the Full-Scale Verification Plan, pursuant to subsection (B) of this section, to the Department for review and comment prior to conducting Full Scale Verification under this section.

(b) A National Pretreatment Program AWPRA applicant may submit the Full-Scale Verification Plan, pursuant to subsection (B) of this section, to the Department for review and comment prior to conducting Full-Scale Verification under this section, an approach recommended by the Department, or otherwise shall submit the Full-Scale Verification Plan and Report to the Department as a component of the AWP permit application pursuant to this section and R18-9-C816.

The final language reads,

(A) An AWPRA applicant shall conduct Full-Scale Verification of the AWTF. The AWPRA applicant shall develop a Full-Scale Verification Plan for submission to the Department and shall perform full-scale verification testing of the AWTF in compliance with the Plan.

(1) If an AWPRA builds a pilot facility to full-scale, the AWPRA applicant may, instead, opt to conduct piloting and full-scale verification simultaneously. If the AWPRA pursues this option, the AWPRA shall:

(a) Consult with the Department, and

(b) Develop and submit a Hybrid Pilot and Full-Scale Verification Plan to the Department for review and comment prior to conducting piloting and full scale verification under this section, R18-9-C815, and other requirements which are previously determined through consultation with the Department, and

(c) For the purposes of the permit application pursuant to R18-9-C816, submit the Hybrid Pilot and Full-Scale Verification Plan and a Hybrid Pilot and Full-Scale Verification Report in lieu of the submission requirements at R18-9-C816(A)(2)(g) and (h).

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

Comment 1: General Public

Standard methods have become increasingly obsolete in addressing modern water quality concerns, because emerging contaminants are found in reclaimed waters potentially affecting public health. These contaminants include bacterial pathogens (particularly those related to antibiotic-resistant ones), viral pathogens, protozoal hosts for intracellular pathogens, and extracellular DNA (e.g., antibiotic resistance genes [ARGs]). Many of these pathogens are fastidious, slow growing, and difficult to culture for routine monitoring (viable but non-culturable). Any rulemaking must be required to remove and test for these considerations.

ADEQ Response 1:

ADEQ appreciates the comment. The Advanced Water Purification (AWP) regulatory program offers two approaches to pathogen removal, Standard and Site-Specific (*See* R18-9-E828). Both Standard and Site-Specific approaches require constant, nearly comprehensive removal of three "reference pathogens" – Enteric Virus, Giardia and Cryptosporidium. ADEQ's decision to utilize the reference pathogens as the central requirement in rule addressing pathogen removal is based on considerable research indicating that removal of these reference pathogens indicates wider removal of all pathogens to safe levels. Concerning virus removal, the Standard Approach requires a 13 log (99.99999999999%) removal of Enteric Virus, which itself indicates similar removal of viruses such as Hepatitis, HIV, and coronavirus. For Protozoa removal, the Standard Approach requires 10 log removal of Giardia, which is known to indicate wider removal of other protozoa. The Site-Specific Log Reduction approach to pathogen removal at R18-9-E828(C) also requires utilization of the reference pathogens, allowing an applicant to monitor for the reference pathogens and set site-specific log reduction values based on their specific raw wastewater instead of the standard log reduction values. The Site-Specific approach aims to achieve the same protective pathogen removal as the Standard approach. A key difference between the two approaches is that a utility can choose to get credits for some of the treatment or removal that occurs at a providing (and treating) wastewater treatment plant. Beyond the reference pathogens, the AWP program requires protective, continuous monitoring of surrogates like conductivity and turbidity to ensure proper water treatment. Further requirements include permittee cooperation with local county public health departments, as necessary, to track constituent of concern (COC) peaks from disease outbreaks or other impactful health events (*See* R18-9-E824(B)(10)(c)). Additionally, R18-9-E828(C)(9) states that analysis for Giardia lamblia cysts, Cryptosporidium oocysts and Norovirus are done using EPA methods 1623.1 and 1615, not Standard Methods. This proposed rule, as well as the aforementioned EPA methods, cite the use of Standard Methods, Section 9020, for general requirements and recommendations for QA (quality assurance) and QC (quality control) procedures only.

Comment 2: General Public

I would like to know if AWP has been successfully used in other locations, and what the rate of failure is for those systems.

ADEQ Response 2:

ADEQ appreciates the comment. The Advanced Water Purification (AWP) regulatory program allows for "Direct Potable Reuse" (DPR) to be permitted in Arizona. The EPA defines DPR as the treatment and distribution of a municipal wastewater stream for use as potable water without the use, or with limited use, of an environmental buffer. Through an Arizona State Legislative mandate, enshrined in statute at A.R.S. § 49-211, ADEQ is required to develop and put into rule a DPR regulatory program. DPR facilities have been shown to be a safe and effective source of potable water over decades of implementation through projects that have been installed worldwide, including in localities such as California (2023); Colorado (2022); Texas (2013 and 2014); Namibia (1968 and 2002); Singapore (2019); and South Africa (2011).

Additionally, Minimum Design Requirements, specifically R18-9-F832(D)(7), requires an applicant to address system failure, including the inclusion of mitigation measures like engineered storage buffers, which are typically an on-site storage facility used to provide retention time before advanced treated water is introduced into a drinking water treatment facility or distribution system. An engineered storage buffer must be sized adequately to hold off-spec water for a time period no shorter than the facility's failure response time. This ensures off-spec water will not be delivered off facility until the appropriate standards are met.

Comment 3: General Public

For my entire career, waters treated for potable purposes were never referred to as being "Purified". Purified Water has a very specific definition, quality is measured in resistivity vs. conductivity and, when put on a petri dish, will not show biological activity. While "purified" is used as an adjective in the phrase "purified water", the process of "water purification" is a verb, action word, indicating that the water being treated will eventually result in producing "purified water". Unless these treated waters are measured in megohms (Mohm), that is a very misleading title which may, in fact, result in legal activity in the event any lives are negatively impacted. I realize that "Toilet To Tap" or "Direct Potable Reuse" are unsavory titles for marketing purposes, but that should not open the door to misleading advertising, either. Purified water is not being produced or delivered.

ADEQ Response 3:

ADEQ appreciates the comment. Absent a definition for "purified water" or "purification" in Arizona Administrative Code (A.A.C.) Title 18, Chapter 9, Water Pollution Control, generally, or in the Advanced Water Purification (AWP) final rules in Article 8, specifically, ADEQ disagrees with the definition of "purified water" provided by the commenter, and refers the commenter to the definition of "Advanced Water Purification". As defined in this final rule, "Advanced Water Purification" means "the treatment or processing of treated wastewater to advanced treated water standards for the purpose of delivery to a drinking water treatment facility or a drinking water distribution system" (R18-9-A801(6)). The title, therefore, is contextualized to the scope of this program, and is not intended to mislead.

Furthermore, water purification, as recognized in the water treatment industry, is a process of removing harmful contaminants from

water to ensure its safety for a particular use, such as public consumption. Through the AWP treatment process, potable drinking water is produced by removing harmful contaminants and produces water of such a quality that meets or exceeds the drinking water requirements under the Safe Drinking Water Act (SDWA).

Comment 4: General Public

AWP will impact disinfection byproducts (DBPs). Current disinfection practices will need to be changed and, most likely, be modified on an almost continuous basis given that water qualities can change on a continuous basis. There are health benefits associated with minerals that are naturally occurring in potable water supplies, especially from aquifers. Calcium, magnesium and any variety of trace metals are all beneficial, in certain amounts, to human health. What are the plans for addressing these types of issues?

ADEQ Response 4:

ADEQ appreciates the comment. Re-mineralization is not addressed in the AWP program, but is not prohibited, nor restricted by the program either. A permittee may choose to re-mineralize advanced treated water or finished water based on what's best for the Public Water System (PWS). ADEQ agrees that AWP can impact formation of DBPs, such as N-nitrosodimethylamine (NDMA), which may form after and during treatment processes with wastewater associated DBP precursors. However, monitoring and reporting requirements for TOC management and removal, which correlates with regulated DBP precursor removal, have been established in rule (*See* R18-9-F834). Additionally, permittees are required to maintain up-to-date TOC limits in the advanced treated water. Furthermore, the safeguards against DBP formation in the SDWA will apply to the PWS. Both SDWA and AWP frameworks are designed to control contaminants to levels below the SDWA-MCLs.

Comment 5: General Public

The solution to pollution is dilution. Water is the universal solvent. Let's consider AWP as being the pollutant, i.e., man-made. So, rather than bringing this "pollutant" right to the front door of the potable treatment system, why not put it back into the natural environment, i.e. rivers, aquifers, lakes etc. Once there, Mother Nature can take over, thus yielding a more "natural" product that is relatively benign in terms of water chemistry. All potable water treatment plants already have the means for treating these waters, so there would be little need for changing treatment schemes or practices. It's an easier sell to customers, no need for more pipes in the ground, and there's greater savings for customers.

ADEQ Response 5:

ADEQ appreciates the comment. The process explained by the commenter is indirect potable reuse (IPR), wherein an environmental buffer is utilized prior to the water being treated at a drinking water treatment facility (DWTF). Alternatively, the AWP program allows for "Direct Potable Reuse" (DPR) to be permitted in Arizona as a result of a Legislative mandate, enshrined in statute at A.R.S. § 49-211, which requires ADEQ to develop a DPR regulatory program in rule. The resulting AWP program

ensures safety through a protective, technological treatment process. Additionally, the program creates flexibility for a permittee to blend the "advanced treated water" product from an Advanced Water Treatment Facility (AWTF) with other sources, if they choose, though it is not necessary to meet treatment standards, since the water will meet drinking water treatment standards before it leaves an AWTF.

Comment 6: General Public

We do not want sewage (a.k.a. – wastewater) mixed into our drinking water. There are too many toxins flushed down the drain and we don't want any of them in our body. We understand the importance of water conservation but this goes too far. The 'toilet to tap' rules you are suggesting should only be used in landscaping. There are too many chemicals and pharmaceuticals that go down the drain/toilet now to make it safe for humans. Can you guarantee 100% removal of all the bad stuff? Because we have no wish to consume someone else's blood thinner medication or diabetes medicine or birth control, etc.

ADEQ Response 6:

ADEQ appreciates the comment. The AWP program does not permit the mixing of wastewater with potable water. AWP involves a robust, multi-step treatment process combining multiple, discrete and proven technologies to treat an already treated wastewater source (i.e. wastewater that has been treated previously by a water reclamation facility) to, and in some cases beyond, drinking water standards. A three-tier approach to chemical control is a key component of the AWP program and is designed to identify, address and control traditionally unregulated or emerging contaminants that can be found in the treated wastewater source for Advanced Water Treatment Facilities. Tier 1 Chemical Control can be found in rule at R18-9-E825 and adopts the Safe Drinking Water Act Maximum Contaminant Levels as baseline standards. Additionally, Tier 2 Chemical Control requirements can be found in rule at R18-9-E826. The rule requires a comprehensive chemical inventory of all non-domestic dischargers in the permittee's collection systems, followed by individual calculations for each chemical to determine a project daily concentration and finally a comparison of that concentration with health advisories to determine a control approach. The regulations require the use of validated treatment technologies which must meet stringent monitoring and performance standards. Tier 3 Chemical Control can be found in rule at R18-9-E827, which involves utilizing, in most cases, existing chemicals or compounds in a treated wastewater to monitor performance of an individual technology or process in an Advanced Water Treatment Facility's treatment train.

Generally, the AWP program is highly protective of human health through a robust regulatory framework which encompasses pre-permitting regulations (*see* R18-9-C812 – C818), constituent control (*see* R18-9-E824 – E828), monitoring and reporting (*see* R18-9-E830 – E831), and technical and operational requirements (*see* R18-9-F832 – F837).

Comment 7: General Public

We demand all fluoride be removed from public drinking water since it has been proved to be dangerous to our health.

ADEQ Response 7:

ADEQ appreciates the comment. The AWP program adopts all Safe Drinking Water Act - Primary Drinking Water Maximum Contaminant Levels (SDWA-MCLs), including the one for fluoride, which is currently set at 4 mg/L (*See* Tier I Chemical Control; R18-9-E825). This adopted treatment standard for fluoride is derived from and developed by the U.S. Environmental Protection Agency (EPA) in accordance with the Safe Drinking Water Act (SDWA). Furthermore, removing fluoride from public water systems is beyond the scope of this rulemaking. SDWA public water system regulation continues to be applicable to any and all public water systems serving drinking water to the public. The AWP program does not supplant or supersede the requirements under the SDWA, and all AWP facilities must comply with applicable SDWA requirements.

Comment 8: General Public

Please check the Clean Water Act of 1972 which was approved to regulate the discharge of pollutants into U.S. water systems and to set quality standards. Most municipal water has fluoride, radiation, heavy metals, pharmaceuticals drugs, and industrial chemicals therein, each having detrimental health effects on the animals and humans who consume them. Researchers have long established that these and other drugs pass the municipal water filtering system which pose serious health risks.

ADEQ Response 8:

ADEQ appreciates the comment. The Clean Water Act (CWA) regulates water quality standards for protection of surface waters, to ensure navigable waters are fishable and swimmable. The Safe Drinking Water Act (SDWA), alternatively, regulates water quality standards for public drinking water supplies. ADEQ designed the AWP program to comply with all applicable standards under the SDWA and, in fact, goes beyond SDWA standards in some, necessary cases. For example, the AWP program requires control of chemical constituents that are typically found in a Water Reclamation Facility's product water (which is the "treated wastewater" source to an AWTF) that do not have SDWA Maximum Contaminant Levels (MCLs), but do have other, established health advisories (*see* Part E of the AWP program, entitled, "Constituent Control, Monitoring and Reporting"). In sum, the municipal wastewater constituents the commenter refers to are addressed through the AWP program through myriad control mechanisms, including an enhanced source control program and extensive and protective chemical and pathogen control requirements that are customized to the permittee's treated wastewater influent.

Comment 9: General Public

There are healthier alternatives. First and foremost is education. Teach Arizona residents how to conserve water. Use taxpayer dollars to retrofit homes with gray water systems and/or rainwater catchment systems.

ADEQ Response 9:

ADEQ appreciates the comment. While alternative strategies for managing water resources exist, the Arizona Legislature mandated ADEQ to adopt an AWP program (referred to in statute and literature as "direct potable reuse"), enshrining the mandate in statute

at A.R.S. § 49-211 in 2022. AWP is a key contribution to Arizona's long history of water conservation and stewardship, but as the commenter mentions, is only one tool, amongst many, which must work in conjunction with water conservation, recycling, and other sustainable management practices for a holistic approach to ensuring a safe and adequate drinking water supply for Arizonans.

Comment 10: Interest Group

In our opinion, some aspects of the rules lead to over-regulation and in some aspects the rules are dismissive of the existing processes and requirements administered or regulated by EPA and ADEQ. While we recognize the comprehensive nature of the proposed rules, we are concerned that they may be overly burdensome and not sufficiently aligned with existing EPA and ADEQ requirements regarding source water. If ADEQ determines that further regulation of source water is necessary, such regulations should apply uniformly to all water systems—not just those under AWP permitting—to enhance public health protection across both conventional and advanced wastewater and water treatment systems. Requiring the permittee to monitor for unregulated Tier 2 and some Tier 3 compounds is overly burdensome and we feel does not belong in an AWP permit. The requirement by rule to monitor for Tier 2 and Tier 3 compounds is unnecessarily burdensome to an AWP permittee and establishes de facto water quality regulation outside any CWA or SDWA framework which is a major concern. If ADEQ feels these compounds are a concern then shouldn't this monitoring be required in any other permit administered by ADEQ? The multi-barrier treatment technologies deployed for an AWP facility that purify water are inherently safer than any conventional water treatment system in Arizona. As an alternative, perhaps the framework for selecting Tier 2 chemicals as presented in the Rule could be included as guidance. ADEQ could work with the applicant to develop "performance-based indicators" based on unregulated chemicals unique to each permit and source watershed. The agreed-upon performance-based indicators could include Tier 2 and Tier 3 chemicals.

ADEQ Response 10:

ADEQ appreciates the comment. ADEQ designed the AWP program using seven guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. ADEQ aimed to achieve a balance of all these principles, especially i. "the protection of public health and the environment" and vi. "specific, practical, flexible, and implementable." To protect public health, some prescriptive regulation is required. This is especially true due to the nature of the constituents with health advisories in the Tier 2 category. Unlike traditional public water systems regulated under the Safe Drinking Water Act (SDWA) that utilize groundwater or surface water as source water, AWTFs source water from water reclamation facilities. This "treated wastewater" source or influent requires unique control in a way that neither the scopes of the Clean Water Act (CWA), nor the SDWA address. That is why special monitoring, among other requirements, is required as part of the AWP program and is not equally applicable across all water treatment programs. Further regulation of municipal treated wastewater, as a source water, is necessary under AWP because there is no federal equivalent for

such a source water.

The Tier 2 rule in the AWP program requires inventorying all chemicals in the sewershed and analyzing them using a procedure that takes into account public health protection, dilution, health advisories, and more. Additionally, once a chemical is earmarked as a Tier 2 chemical for a facility, the chemical must be addressed through a controlling mechanism; primarily, through source control or facility treatment. To ensure the requirements are not burdensome, ADEQ is not unilaterally establishing a static list of AWP-specific chemicals to control, but rather requiring a site-specific approach. The Tier 2 rule requires the applicant (an Advanced Water Purification Responsible Agency or "AWPRA") to characterize its own collection system(s) and treated wastewater influent in order to determine the presence of chemicals, which means that chemical control is only required for chemicals that are actually present in that individual AWPRA's source water.

This comprehensive approach meets the mark of public health protection when it comes to this sector of chemical control and is an approach generally supported by stakeholders and the regulated community, as is most clearly indicated through the Technical Advisory Group (TAG) recommendations for the AWP program (*see* Advanced Water Purification (AWP): Technical Advisory Group (TAG) Recommendations, page 12, https://static.azdeq.gov/wqd/awp/tag_recommendations.pdf). That group included core stakeholder representatives such as small, medium, and large Arizona utilities, and regulatory agencies. Furthermore, ADEQ conducted extensive stakeholder engagement throughout the rulemaking process prior to the proposed rule (*see* Heading No. 7, subheading "Stakeholder Engagement" of this NFRM for an in-depth discussion on the stakeholder engagement process in the development of the AWP program, including the Tier 2 framework). While ADEQ recognizes that there is some difference in opinion about the specifics of chemical control regulation, one result of this comprehensive stakeholder engagement effort is general alignment and understanding of these major components, such as the need for regulation of AWP-specific chemicals beyond the federal Maximum Contaminant Levels (MCLs), overall.

Notably, while the Tier 2 process is proposed for codification in rule, it nevertheless allows for unique outcomes customized to each permit and source watershed by factoring in the applicant's non-domestic dischargers in their watershed and the chemicals discharged by those dischargers, and as the commenter recommends, facilitates a dialogue between ADEQ and the applicant in setting design, monitoring, and treatment goals.

Comment 11: Utility

Align ongoing monitoring locations and frequency for Tier 1 and Tier 2 contaminants only at the "finished water" location and on a quarterly basis to mirror drinking water standards.

For Tier 1 contaminants, ongoing monitoring for regulated drinking water chemicals on treated wastewater at the end of the Water Reclamation Facility is burdensome and offers no compliance value. Each utility must decide if this monitoring point will assist in meeting compliance and should add monitoring for process control at locations that the utility decides will provide benefit for

system operation. However, we support monitoring and reporting for Tier l on a quarterly basis at the finished water compliance point.

For Tier 2 contaminants, we do not support ongoing monitoring of treated wastewater at the end of the Water Reclamation Facility. Ongoing monitoring at this location prior to the AWTF is burdensome and offers no compliance value. Significant treatment for these contaminants occurs in the AWTF where compliance is designed to be met. Understanding new incoming dischargers is part of our Industrial Pretreatment program and if a concern arises, additional monitoring could be conducted as needed. We suggest that Tier 2 monitoring at this location only be required when the chemical is detected in the AWTF finished water in two consecutive quarters.

We will support permit compliance monitoring at the AWTF finished water compliance point on a quarterly basis, however, performing this monitoring at the suggested monthly interval is burdensome and is more stringent than Tier 1 contaminants which are primary drinking water standards. Requiring more stringent monitoring for Tier 2 chemicals over Tier 1 chemicals implies there is more concern about these chemicals than Tier 1. Due to the complex analytical techniques needed for many Tier 2 chemicals, test results are generally received from the lab two or more weeks after sample collection. It should be noted that treatment effectiveness is monitored continuously using online analyzers at Critical Control Points throughout the treatment process.

ADEQ Response 11:

ADEQ appreciates the comment. As the commenter highlights, ADEQ requires monitoring of Tier 1 and Tier 2 chemicals in the AWP program at two locations relative to the Advanced Water Treatment Facility (AWTF): at the finished water (advanced treated water) and at the water reclamation facility effluent (treated wastewater) (*see* R18-9-E829(C) and (D)). Notably, compliance monitoring for Tier 1 and Tier 2 chemicals occurs only at the advanced treated water.

ADEQ disagrees with the commenter that monitoring at the treated wastewater provides “no compliance value”. Monitoring at this location prior to the AWTF helps characterize a highly variable source and provides necessary data to the AWPRA on treated wastewater trends, providing greater understanding to the AWPRA about what data is typical and atypical. For example, this information is necessary for the AWPRA which is required to conduct new Tier 2 analyses upon certain occurrences, including when the “AWPRA is aware of, becomes aware of, or should reasonably be aware of…significant volumetric adjustments to an AWPRA water reclamation facility’s total daily volume of treated wastewater that are likely to impact the expected concentration of any [Tier 2 chemical]” (R18-9-E826(A)(2)(a)(ii)). An AWPRA’s familiarity with the treated wastewater, derived through ongoing monitoring efforts, is a valuable tool in complying with the AWPRA’s requirement to maintain a Tier 2 chemical list. Actual measurement of the highly variable treated wastewater is an important aspect of the AWPRA’s requirement to be a holistic steward of the AWP project by providing insight into changes at a water reclamation facility as well as into non-domestic

dischargers under the enhanced source control program.

The commenter also expresses disagreement with the ongoing monitoring of Tier 2 chemicals at a monthly interval as required under R18-9-E829(D)(1) and suggests that the heightened monitoring requirement of Tier 2 chemicals indicates ADEQ's concern over these chemicals more than Tier 1. While ADEQ understands the complex analytical needs presented by monitoring Tier 2 chemicals, the more stringent requirement reflects the new, AWP-specific requirement of identifying, controlling, and monitoring Tier 2 chemicals that is not equivalent to Tier 1 chemicals, with which utilities have experience through the Safe Drinking Water Act (SDWA). The rule does, however, balance the commenter's interest in subsection (D)(9) by providing a pathway for reduced monitoring frequency for Tier 2. There are two reductions available, a decrease from monthly to quarterly and a decrease from quarterly to annually based on the amount of data demonstrating that a chemical has not been detected (R18-9-E829(D)(9)). This provision is further evidence that ADEQ is not more "concerned" about Tier 2 chemicals, but rather, intends to carefully introduce the new monitoring regime to utilities and see demonstrable progress in achieving quality standards before relaxing the requirements.

Comment 12: Utility

Though Scottsdale Water appreciates ADEQ including the use of the 2018 EPA Edition of Drinking Water Standards and Health Advisories Tables, the list should be qualified to only require compliance with chemicals that have an indicated human health risk. Many chemicals on this list are classified as "Indicates inadequate or no evidence in humans" or "Not classifiable as to human carcinogenicity", "Not likely to be carcinogenic to humans", etc. Including chemicals that do not pose a human health risk is overburdensome to the permittee.

ADEQ Response 12:

ADEQ appreciates the comment. The 2018 Edition of the Drinking Water Standards and Health Advisories Tables addresses contaminants, known or anticipated to be present in drinking water, that can cause multiple negative effects on human health, including both carcinogenic and non-carcinogenic effects. Because both, cancer and non-cancer effects, pose a threat to human health, they are being considered under the chemical control procedure in R18-9-E826 of the final AWP rule. Per this rule an applicant must generate certain inventories and conduct an analysis in order to determine chemicals that must be monitored, removed, and/or treated. The applicant must understand and list all non-domestic dischargers in the collection system that are direct or indirect sources to the water reclamation facility and generate an inventory of chemicals that are used, stored, or discharged by all of those non-domestic dischargers (or used at the water reclamation facility or advanced water treatment facility). From these lists and inventories, the applicant must conduct a "Tier 2" analysis for every identified chemical, and set action levels accordingly, in one of a variety of ways. One of the methods to set action levels for identified chemicals is to determine whether there is a corresponding health advisory value established in the "2018 Edition of the Drinking Water Standards and Health Advisories

Tables". ADEQ expects the applicant to reference this table, which contains EPA-established health advisories for known drinking water contaminants.

The 2018 document provides technical information on contaminants that can cause human health effects and are known or anticipated to occur in drinking water. These health advisories are well-known and widely utilized in drinking water treatment activities across the country. For this reason, ADEQ does not believe that the requirements related to the 2018 table are overburdensome, because the list has been determined by USEPA to contain contaminants that can cause multiple negative human health effects, including both non-carcinogenic and carcinogenic effects.

Comment 13: Utility

Concerning R18-9-E826, identification of Tier 2 chemical list should not be the function of utilities and requiring such an exercise for all applicants could result in conflicting information, including inconsistent water quality permitted at AWP facilities and across the State of Arizona. It is recommended that ADEQ establish a listing of Tier 2 chemicals. Statewide universal standards for unregulated contaminants would provide the public with a higher level of confidence in ADEQ's safe drinking water oversight.

ADEQ Response 13:

ADEQ appreciates the comment. The Tier 2 chemicals selection is site-specific and should be selected based on each utilities' sewershed and their contributing dischargers. A defined and specific list of chemicals established by ADEQ would be overburdensome for both small and large AWPRAs. Small sewersheds that do not have large industries do not need to monitor for chemicals that are not being discharged. Similarly, large sewersheds may not need to monitor chemicals that do not have significant flows as there will be a dilution effect in large flow systems. Therefore, ADEQ places the onus onto the AWPRA, and equips the AWPRA with the necessary information, to characterize wastewater and identify Tier 2 chemicals based on what is actually present in the source water. Notably, the AWPRA must deliver this list to ADEQ for review and approval, ensuring a high level of oversight.

Comment 14: Utility

The requirement of maintaining a chemical inventory list of each non-domestic dischargers list is excessive and burdensome, particularly for larger urban collection systems. As written, the rule would require the AWPRA to survey every single non-domestic discharger in the collection system. For a large urban area this may include thousands of local businesses, many of which may not hold pretreatment permits with their local sewer authority.

ADEQ Response 14:

ADEQ appreciates the comment. As the commenter notes, a primary requirement under the Tier 2 Chemical Control rule, R18-9-E826 is for the AWPRA to list "all non-domestic dischargers in the collection system that are a direct or indirect source to an AWPRA water reclamation facility" and generate "a list of chemicals that are used, stored, or discharged by all non-domestic

dischargers" from that list (R18-9-E826(B)-(C)). This chemical inventory list is critical to the identification of Tier 2 chemicals for control and must be extensive in order to ensure that all chemicals in the source water are controlled through treatment or enhanced source control. Therefore, while the requirement is burdensome, it is not overly-burdensome as the responsibility to provide safe drinking water is paramount. As with many other elements of the program, ADEQ had to balance many different interests, exemplified in the guiding principles governing the rulemaking: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. The AWP program and its regulations were designed to achieve a careful balance between all of the principles, including between public health protection and implementability.

While satisfaction of this requirement will be time-consuming and complex, it is implementable, and the program directs AWPRAs on how to generate this list of non-domestic dischargers and chemicals. Under the Enhanced Source Control rule, the AWPRA is required to identify all "potentially impactful non-domestic dischargers" (R18-9-E824(B)(4)) which must be continuously verified and investigated, and which may include site visits and inquiries into the chemicals discharged or projected to be discharged by that discharger. Knowledge and understanding of the potentially impactful non-domestic dischargers and the chemicals they discharge in the enhanced source control program directly feed the generation of the chemical inventory list in the Tier 2 rule.

For the non-domestic dischargers that are not captured in the enhanced source control program, many can be generally identified and their chemicals characterized by an understanding of their industry. For example, ADEQ agrees that for large sewersheds, it may be infeasible to conduct a chemical survey of all entities such as nail salons, dry cleaners , car washes, dentists, and/or restaurants. However, if the AWPRA identifies the type and number of dischargers, many of the chemicals can be known through knowledge of the industry; e.g. - nail salons discharge acetone; dry cleaners discharge Trichloroethylene; car washes discharge heavy metals and volatile organic compounds (VOCs); dentists discharge mercury; and restaurants discharge fats, oils, and greases (FOGs). Therefore, the generation of the chemical inventory list could include a qualitative description of the number of such establishments and the contaminants that are used or stored within these establishments. From here, this data can be used to project total daily loads contrasted with the overall flow, accounting for dilution in larger sewersheds, to project the expected concentration of chemicals and generate a Tier 2 list of chemicals (R18-9-E826(D)).

Comment 15: Utility

The list of AWPRA determined Tier 2 chemicals may include contaminants for which there is no approved analytical methodology. The Clean Water Act and the Safe Drinking Water Act both identify a rigorous process to ensure that an approved and certifiable analytical laboratory method exists for a contaminant prior to issuing a new regulation. The proposed section in the draft AWP rule sidesteps this critical process which ensures laboratories across the region produce data of the same quality.

ADEQ Response 15:

ADEQ appreciates the comment. ADEQ confirmed that analytical methodologies exist for a majority of Tier 2 contaminants. The Tier 2 rule, R18-9-E826(D), details multiple ways to derive health advisories and the corresponding analytical methodologies for chemicals. The primary option available, the option ADEQ believes will be most often utilized, is for the AWPRA to compare the projected daily concentration of each chemical against the lowest corresponding health advisory value from EPA's 2018 Health Advisory (HA) Table (R18-9-E826(D)(4)). For these chemicals, corresponding, approved analytical methodologies do exist. For chemicals that do not have an established health advisory in EPA's HA table, the AWPRA may look to a notification level or equivalent from another state's drinking water program that has been endorsed by ADEQ under (R18-9-E826(D)(5)). Currently, ADEQ has endorsed a notification level for Trimethylbenzene, and has additionally confirmed that an existing, EPA-approved lab methodology is available (R18-9-E826(D)(5)(a)(i)). For chemicals that do not have an established health advisory or an endorsed notification level from another state, the AWPRA must compare the projected daily concentration of the chemical and compare it to any listed and corresponding ADEQ Departmentally-established health advisories ((R18-9-E826(D)(6)). Here, the Department has established health advisory levels for eight chemicals or chemical compounds in rule. Additionally, the Department has confirmed that existing, EPA-approved lab methodologies are available and appropriate for all health advisories on the list.

For chemicals that do not have corresponding values from any of the aforementioned steps, but do have a Reference Dose (RfD) or Cancer Slope Factor (CSF) available in credible peer-reviewed literature or in a state or Federal database, the AWPRA must consult with ADEQ and/or the Project Advisory Committee to determine a health advisory value and approved analytical methodology (R18-9-E826(D)(7)). Lastly, for chemicals that an AWPRA is unable to derive a health advisory value for utilizing the preceding steps, the AWPRA must consult with ADEQ and the Project Advisory Committee (if necessary) to determine the health risk of the chemical through a reasonably appropriate bioanalytical study and/or bioassay, wherein the consultation would additionally determine a reasonably appropriate and Departmentally-approved analytical methodology to apply.

Additionally, the final rule at R18-9-F832(D)(10) addresses what an applicant or permittee in required to do when no reliable analytical method is available, "[w]hen there is no reliable analytical method that is technically feasible to measure a contaminant at an established health advisory concentration pursuant to R18-9-E826(D), the health advisory value shall be set at the lowest Method Detection Limit of the corresponding and most sensitive EPA-approved method."

Comment 16: Utility

A recommendation of ADEQ's Advisory Panel on Emerging Contaminants, of which Tucson Water and Pima County served as committee chairs, suggested the use of surrogate chemical class categories for use in monitoring unregulated contaminants. This recommendation is still valid and is commonplace throughout the industry and academic literature. Surrogate chemicals can be chosen strategically by ADEQ, such that they are already associated with approved analytical methodology. We strongly encourage

ADEQ to revisit the vast chemical inventory potential and allow for the use of representative surrogate compounds for Tier 2 reporting.

ADEQ Response 16:

ADEQ appreciates the comment. Under the AWP program, ADEQ requires chemical monitoring, control, and reporting for federally regulated and unregulated chemicals and provides a variety of methods to achieve that requirement. Chemicals for which federal regulations exist must be controlled through Tier 1 chemical control. All other chemicals present in the source water, i.e. site-specific chemicals identified by the AWPRA, must also be identified and controlled. The Tier 2 chemicals are specific to the AWPRA, based on a tailored analysis conducted by the AWPRA utilizing non-domestic discharger and chemical inputs from their collection system. Therefore, it is not feasible, nor practical for ADEQ to generate a list of chemicals applicable to all AWP projects. Similarly, ADEQ may not be able to contemplate all chemicals that may be present in the source water. Also, ADEQ believes that an AWPRA's ability and responsibility to control those chemicals should not be hindered by an inflexible rule.

Tier 2 chemicals must be identified through any of the processes provided for in subsection (D) of R18-9-E826. The AWPRA must compare the projected daily concentration of all inventoried chemicals against a corresponding, established health advisory from a number of recognized sources (including the EPA) before being identified as a Tier 2 chemical for the purposes of the AWP program. Those health advisory sources include EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", ADEQ approved notification levels from other state's drinking water programs or equivalents, the Department's health advisory list, or a health advisory derived from credible, peer-reviewed literature or state or Federal databases (R18-9-E826(D)(1)-(8)).

Comment 17: Interest Group

One of our primary concerns is the adequacy of water quality standards for potable reuse. The proposed rules must explicitly define baseline requirements to ensure the removal of contaminants of emerging concern, such as pharmaceuticals, personal care products, microplastics, and per- and polyfluoroalkyl substances (PFAS). PFAS, often called "forever chemicals," are particularly concerning due to their persistence in the environment and potential health impacts. While we recognize that the Arizona Department of Environmental Quality (ADEQ) is conducting a parallel process to address PFAS contamination more broadly, it is critical that these chemicals be specifically addressed in the context of AWP systems. Current documents suggest a focus on tiered chemical control measures but lack sufficient emphasis on PFAS removal within AWP-specific regulations. Additionally, monitoring and reporting requirements should include provisions for real-time public disclosure of water quality data to build public trust and accountability.

ADEQ Response 17:

ADEQ appreciates the comment. An AWPRA must comply with Tier 1 chemical control limits, which are chemical contaminants

with federally-assigned Maximum Contaminant Levels (MCLs) or treatment techniques. The language in R18-9-E825, the Tier 1 rule, has been updated to cross-reference Title 18, Chapter 4, Article 1 - R18-4-102 - which incorporates by reference the July 1, 2014 version of 40 CFR 141. ADEQ plans in the near future to update this CFR reference in the rule to the most recent version that includes the PFAS MCLs. When this is finalized, that version will automatically apply to the AWP program, and the PFAS MCLs will qualify as Tier 1 chemicals at that time, and PFAS must be monitored and controlled accordingly. For PFAS not regulated under Tier 1, Tier 2 chemical identification and treatment-based control is effective. Many treatment processes that are likely to be utilized in Advanced Water Treatment Facilities (AWTFs) are effective in the removal of microplastics like PFAS. Perhaps the most predominant example is the Reverse Osmosis process.

Synthetic organics, including pharmaceuticals and personal care products will be controlled through source control measures (*see* R18-9-E824), as well as treatment-based approaches. An Advanced Oxidation Process (AOP) is a required component of all AWP treatment trains under the AWP program, which includes a required performance benchmark for the removal of synthetic organics utilizing 1,4-Dioxane or an equivalent (*see* R18-9-F832(D)(4)). Additionally, Ozone/BAC processes must be designed to provide no less than 1.0 log reduction for pharmaceuticals such as carbamazepine and sulfamethoxazole (*see* R18-9-F832(C)(3)).

Furthermore, public disclosure of water quality data is a requirement in the Ongoing Monitoring rule (*see* R18-9-E829(D)(8)), which specifies that an AWPRA is required to report certain violations in the applicable public water system's annual consumer confidence report.

Comment 18: Interest Group

We urge ADEQ to prioritize public education and outreach in communities where AWP projects are planned. The rules currently acknowledge the need to engage the public to overcome skepticism surrounding advanced water reuse, often referred to as the "yuck factor." However, more robust community involvement and transparent communication strategies are necessary to address the public's legitimate concerns about health and safety. This includes providing clear, accessible information about treatment processes, safeguards, and monitoring results.

ADEQ Response 18:

ADEQ appreciates the comment. The AWP program rules require every AWPRA applicant/permittee to engage in a community outreach effort. As each AWPRA will be required to identify and then address the unique properties and characteristics of their treated wastewater influent or source, they are better suited to address outreach in their service area than ADEQ. Rather than ADEQ engaging in enhanced community involvement and communication strategies, the onus is therefore placed on the applicant/permittee, themselves. The rule requires the applicant to develop a Public Communications Plan in order to provide customers in the relevant service areas with "education, awareness, and transparency related to the AWP project" (R18-9-B811). Central to that rule are requirements for the AWPRA to provide consumer notification and community engagement. The AWPRA

must notify all drinking water consumers within its service area of both its intention to apply for an AWP permit, and maintain that communication throughout the pre-application and all other major program phases, through post-operation. This requirement includes, but is not limited to, providing public forums by way of public meetings to educate and inform the interested public.

The community engagement requirements incumbent upon the AWPRA include, but are not limited to, involving local government throughout the AWP project phases, as well as relevant stakeholders such as local health authorities and medical professionals. These requirements set the floor for such engagement and education, and enable and encourage the AWPRA to go further than the minimum requirements in rule by establishing additional community involvement through enhanced communication strategies.

Comment 19: Utility

In the proposed rule, "Tier 1 chemicals" are defined under R18-9-A801 with a reference to 40 CFR Part 141. There is no reference in the definition to an approval date for the MCL list. However, R18-9-E825 states "40 CFR Part 141 (published July 1, 2023)." How will the AWP program incorporate new MCLs, post-July 1, 2023?

ADEQ Response 19:

ADEQ appreciates the comment. The language in R18-9-E825 (the Tier 1 Chemical Control rule) has been updated to cross-reference R18-4-102, which incorporates by reference 40 CFR 141. That rule currently incorporates a July 1, 2014 version of the CFR. However, ADEQ is currently working on a rulemaking to update that reference in Chapter 4, Article 1 to the most up-to-date version of the CFR. Once that rule is updated, it will automatically reflect in the AWP program through that cross-reference. For new Maximum Contaminant Levels (MCLs) established in 40 CFR 141 after that date, ADEQ will incorporate those standards into Title 18, Chapter 4, Article 1 through rulemakings subject to the Arizona Administrative Procedure Act. ADEQ is responsible for administering the drinking water program (under Chapter 4) and the AWP program and will ensure those two programs are subject to the most up-to-date version of the MCLs.

Comment 20: Utility

MCLs for PFOA, PFOS, PFHxS, PHNA, HFPO-DA, and mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS were published in April 2024. Therefore, please verify these PFAS would not qualify as "Tier 1 chemicals" under R18-9-E825 even though they meet the definition in R18-9-A801?

ADEQ Response 20:

ADEQ appreciates the comment. The language in R18-9-E825, the Tier 1 rule, has been updated to reference Title 18, Chapter 4, Article 1 - R18-4-102 - which incorporates by reference the July 1, 2014 version of 40 CFR 141. ADEQ plans in the near future to update this CFR reference in the rule to the most recent version that includes the PFAS MCLs. When this is finalized, that version will automatically apply to the AWP program, and the PFAS MCLs will qualify as Tier 1 chemicals at that time.

Comment 21: Utility

Revise R18-9-E826(B) to be consistent with R18-9-E824(C).

ADEQ Response 21:

ADEQ appreciates the comment. These lists mentioned by the commenter are not meant to be the same and, in fact, serve different purposes. The list in the Tier 2 Chemical Control rule (R18-9-E826(B)) is the "Non-Domestic Dischargers List". The list in the Enhanced Source Control rule (R18-9-E824(C)) is the "Impactful Non-Domestic Dischargers List". The Non-Domestic Dischargers List in the Tier 2 rule is intended to be an initial characterization of all non-domestic dischargers in an AWPRA's collection system that may be direct or indirect sources to the Advanced Water Treatment Facility (AWTF). This list is meant to be broad in order for the AWPRA to adequately characterize the scope of dischargers and chemicals present in their collection system with impacts on AWP source water. The goal of the Tier 2 rule is to generate a holistic understanding of the sources feeding the AWTF, in order to properly address chemical control, whether it be through treatment or control at the source. Alternatively, the Enhanced Source Control rule's "Impactful Non-Domestic Dischargers List" is a subset of the "Potentially Impactful Non-Domestic Dischargers List". The "Potentially List" includes entities subject to control measures such as outreach, facility visits, frequent communications, investigations, and other non-treatment tools that the AWPRA is required to utilize in order to demonstrate control over the treated wastewater source at the discharger level (*see* R18-9-E824(B)(4)). The "Impactful List" includes entities subject to control measures such as locally established discharge limits, monitoring, and targeted outreach (*see* R18-9-E824(C)).

Comment 22: Utility

Please clarify the following in R18-9-E826(C) - "List of chemicals" - Is it ADEQ's intention that the applicant/permittee list all ingredients (chemical composition)? For example, would a fuel station's inventory list "gasoline" or would it list benzene, toluene, xylene, etc.?

ADEQ Response 22:

ADEQ appreciates the comment. The purpose is to generate a list of chemical substances that are used, stored, or discharged, including chemicals used at the Water Reclamation Facility (WRF) and the Advanced Water Treatment Facility (AWTF), not to track the chemical composition of each chemical.

Comment 23: Utility

Please clarify the following in R18-9-E826(C) - "used, stored, or discharged" - It does not make sense to list all chemicals used or stored at a site if the use or storage area is not connected to the wastewater collection system. This requirement should be limited to chemicals discharged to, or with a potential to be discharged to, the wastewater collection system.

ADEQ Response 23:

ADEQ appreciates the comment. Generating a list of chemicals used or stored at a site is required because these chemicals have the potential to indirectly enter the wastewater collection system. One example is a facility that keeps raw materials/chemicals in a storage room that experiences accidental spills while transferring the chemicals from the storage room to a facility for use. This spill can cause dust, containing the chemical(s), to infiltrate the air and settle on the floor which could then be washed down a drain as the spill is cleaned, or directly down the drain from the spill itself, if not cleaned properly. This drain may feed to a pipe leading to the wastewater collection system. Therefore, it is necessary to document chemicals stored and used on site, whether they reach the collection system directly or indirectly in order to best protect human health.

Comment 24: Utility

Please clarify the following in R18-9-E826(C) - "all non-domestic dischargers" - This should be limited to all impactful non-domestic dischargers as described in R18-9-E824(C).

ADEQ Response 24:

ADEQ appreciates the comment. R18-9-E826(C), the Tier 2 rule, requires an AWPRA to generate a list of chemicals that are used, stored, or discharged by all non-domestic dischargers in the "Non-Domestic Dischargers List" generated in subsection (B) of the rule. The generation of this list is a critical requirement of the Tier 2 chemical control analysis conducted by the AWPRA and results in a list of industrial and/or commercial establishments that are present in the collection system that are a direct or indirect source to a Water Reclamation Facility (WRF) in an AWPRA. Therefore, the phrase "all non-domestic dischargers" in R18-9-E826(C) is not limited to the "Impactful Non-Domestic Dischargers List" generated under R18-9-E824. Rather, it is intended to be a separate and broader list. For more explanation on why the scope of these two rules is different, please see ADEQ Response 21.

Comment 25: Utility

Please clarify the following from R18-9-E826(D): How does an applicant/permittee find the latest health advisory notification levels in other states' drinking water programs or find the latest "reference dose or cancer slope factor in credible peer-reviewed literature or state or federal databases"? Will ADEQ have a database on their website that has up-to-date drinking water health advisories from EPA and from other states as well as reference doses and cancer slope factors?

ADEQ Response 25:

ADEQ appreciates the comment. The Tier 2 analysis in R18-9-E826(D) details the requirement for an AWPRA to identify Tier 2 chemicals for control and for setting corresponding health advisory values. The rule provides a variety of methods for achieving this requirement, including, as the commenter highlights, subsections (D)(5) and (D)(7).

Subsection (D)(5) requires the AWPRA to compare the projected daily concentration of a chemical against a corresponding state

drinking water health advisory notification level or equivalent from a state drinking water program "that was developed using a method that ADEQ approves and lists". This subsection includes a list of ADEQ-approved health advisory notification levels from other states and currently includes only Trimethylbenzene. As ADEQ becomes aware of and vets other state drinking water health advisories or equivalents, it may update the list in subsection (D)(5)(a).

Subsection (D)(7) requires the AWPRA to compare the projected daily concentration of a chemical (that cannot be established through any process in (D)(4)-(6)) to consult with ADEQ and/or the Project Advisory Committee to determine a health advisory value on a case-by-case basis by utilizing a Reference Dose (RfD) or Cancer Slope Factor (CSF) from credible peer-reviewed literature or state or federal databases. ADEQ does not intend to post a database of drinking water health advisories from EPA, from other states, nor peer-reviewed literature with reference doses and cancer slope factors online. R18-9-E826(D) provides the necessary information for an applicant / permittee to identify health advisories for any chemicals identified. The rule specifies that in some cases, the responsibility will rest with the AWPRA to find resources and present them to ADEQ for review during the consultation process provided for in the rule.

Comment 26: Local Government

We are supportive of the requirement in R18-9-E826(A)(2)(c) to conduct a Tier 2 chemical contaminant analysis at every permit renewal.

ADEQ Response 26:

ADEQ appreciates the comment.

Comment 27: Local Government

We are supportive of the requirement in R18-9-E826(C) to maintain a chemical inventory list.

ADEQ Response 27:

ADEQ appreciates the comment.

Comment 28: Local Government

The equation for "expected daily concentration", in R18-9-E826(D)(3), which is derived from total (chemical) contaminant load divided by total influent flow rate, will result in an underestimate of the maximum concentration. Such a calculation, which is intended for comparison to health advisories, will introduce bias in the form of concentrations appearing to be lower. This equation should not be the sole method to determine the maximum design concentration for processes to remove chemical contaminants.

ADEQ Response 28:

ADEQ appreciates the comment. The Tier 2 Analysis in R18-9-E826 is designed to derive the projected daily concentration of each chemical. That projected daily concentration is calculated from the projected load of each contaminant which is based on what is used, stored, and/or discharged by the non-domestic dischargers in the collection system (*see* R18-9-E826(D)(1)). The

mass loading of contaminants (or projected load) will be derived using the maximum concentration for each chemical (*see* R18-9-E826(D)(1)). The Department believes a peaking factor is not explicitly required in the Tier 2 rule.

Comment 29: Local Government

Toxic chemicals, or potentially toxic chemicals, should be prohibited from being introduced into full-scale or operating AWP facilities to determine process efficacy. This practice is not allowed in drinking water facilities even for short periods of time. The appropriate procedure would be to perform bench or pilot testing with toxic or potentially toxic chemical contaminants.

ADEQ Response 29:

ADEQ appreciates the comment. As specified in R18-9-E827(C)(1) and (2), the performance based indicators (PBI) can be selected from the pre-existing chemicals identified in treated wastewater or introduced as a new chemical if no pre-existing chemicals are relevant as a PBI. During pilot study, verification will be done for the initially chosen PBIs to evaluate the treatment train performance. This will be repeated at full scale as well. All newly introduced chemicals for a PBI purpose are unlikely to be toxic; for example, sucralose does not have any known health impacts and is a useful PBI for RO. However, for other PBIs that are problematic, such as the introduction of 1,4-Dioxane, Tier 2 requirements would apply, such as monitoring, associated action levels. Diversion of the chemical would also be required, should any treatment processes fail. Action levels or health advisory limits will be imposed to ensure compliance at the finished water location to keep the concentration below any health-related limits.

Comment 30: Utility

As a basic tenet, when establishing new rules and regulations, the regulating agency should be fair, equitable, consistent, and predictable and should consider the technological and economic cost-benefit in the development and application of rules that impact the public. Under the proposed Tier 2 requirements set out in A.A.C. R18-9-E826, the lack of equitable, consistent, and predictable standards is concerning. Specifically, each Advanced Water Purification Responsible Agency (AWPRA) could be held to a different set of chemicals controls, monitoring, and reporting requirements. Under the proposed rule, these chemical controls, monitoring, and reporting requirements may vary from AWPRA to AWPRA, depending arbitrarily on when an AWPRA submits its AWP application, the AWPRA's source water, and the subjective decisions (current and future) of other state regulators, individual ADEQ staff members assigned to a particular AWPRA project, and members of the Project Advisory Committee.

Under the SDWA, the Environmental Protection Agency (EPA) is required to establish health-based water quality standards using a 3-step process (EPA 816-F-04-030 - June, 2004) that includes the following:

1) Identify contaminants that present a risk to public health,

2) Determine a maximum contaminant level goal below which there is no known health-risk, and

3) Specify a feasible maximum contaminant level (MCL) based on health-risk. When it is not feasible (e.g., economically or technically) to specify an MCL, a treatment technique in lieu of an MCL will be established to ensure control of the contaminant.

We support the MCLs established in R18-9-E825 for Tier 1 Chemical Control. However, the proposed alert levels, action levels, and chemical control requirements set forth in R18-9-E826 for Tier 2 Chemical Control fail to meet the basic tenets of the SDWA and its 3-step process for establishing health-based water quality standards. We have previously commented to ADEQ that the constituents discussed in R18-9-E826 are, by definition, "not regulated in the SDWA" and thus have not been identified by EPA as a risk to public health. Thus, R18-9-E826 should be removed from the draft rule along with all other references to control, monitoring, and reporting of Tier 2 chemicals.

The proposed Tier 1 and Tier 3 chemical control requirements provide robust safeguards to protect public health. Furthermore, consistent with EPA's third tenet to establish treatment techniques in lieu of water quality standards, ADEQ has established in the rule robust chemical treatment techniques and barriers, beyond that of the SDWA, which forcefully protects public health. The Tier 2 requirements, which address only constituents not regulated in the SDWA and which have not been found by the EPA to pose a risk to public health, add little, if any safeguards, while adding significant costs that will be passed on to customers.

We are committed to working collaboratively with ADEQ on the development and eventual approval of Advanced Water Purification rules.

We strive to achieve a regulatory framework that provides ADEQ with the appropriate level of oversight, while also affording utilities the flexibility to design and operate facilities in a manner that aligns with the health-risk based requirements of the SDWA and offers economically viable options for our ratepayers.

ADEQ Response 30:

ADEQ appreciates the comment. The Department designed the AWP program, including the Tier 2 rule, using seven guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. While those principles guided the development of the rules, ADEQ appreciates and endorses the commenter's goal of making regulation "fair, equitable, consistent, and predictable", as well. Additionally, ADEQ recognizes that other factors play into the balance of a regulatory program's (and an individual rule's) development.

The commenter points out that chemical controls, monitoring, and reporting requirements may vary from AWPRA to AWPRA. This customization or individualistic approach to AWP regulation was designed intentionally in order to properly address unique-to-the-facility challenges each AWPRA will face in controlling constituents in their AWTF source water or "treated wastewater" influent. In fact, the approach in the Tier 2 rule identifies constituents of concern beyond the MCLs in Tier 1 and adjacent to the performance-based indicators in Tier 3, in such a way where an AWPRA will have to address only those Tier 2 chemicals that are pertinent to their facility and none more. The Tier 2 rule requires inventorying of all chemicals in the collection system and analyzing them using a procedure that takes into account public health protection, dilution, health advisories, and more.

Additionally, once a chemical is earmarked as a Tier 2 chemical for a facility, the chemical must be addressed through a control approach: primarily, through source control or facility treatment. This comprehensive approach, while challenging for permittees and ADEQ administration alike, meets the high bar necessary to adequately protect public health in the AWP context.

Also, unlike traditional public water systems regulated under the Safe Drinking Water Act (SDWA) that utilize groundwater or surface water as source water, Advanced Water Treatment Facility (AWTF) source water will come from water reclamation facilities. This "treated wastewater" source or influent requires unique control in a way that neither the scopes of the Clean Water Act (CWA), nor the SDWA address. That is why special monitoring, among other requirements, is required under the AWP program.

The commenter also voices concern over potential regulatory variance due to expected subjective decisions (current and future) of other state regulators, individual ADEQ staff members assigned to a particular AWPRA project, and members of the Project Advisory Committee. ADEQ responds to this comment by reminding the commenter that the agency is required to administer all of its programs impartially and has no intentions of deviating from this requirement in the administration of the AWP program.

Additionally, the commenter states that "...the proposed alert levels, action levels, and chemical control requirements set forth in the [Tier 2 rule] fail to meet the basic tenets of the SDWA and its 3-step process for establishing health-based water quality standards. We have previously commented to ADEQ that the constituents discussed in R18-9-E826 are, by definition, 'not regulated in the SDWA' and thus have not been identified by EPA as a risk to public health. Thus, R18-9-E826 should be removed from the draft rule along with all other references to control, monitoring, and reporting of Tier 2 chemicals." ADEQ disagrees with the commenter's position that when a chemical is not regulated under the SDWA that means the EPA has not identified it as a risk to public health or that the chemical is not a risk to public health outside of SDWA regulation or identification. On the contrary, the Tier 2 rule requires all inventoried chemicals to have their projected daily concentration (PDC) in the treated wastewater influent to the AWTF be calculated, followed by a comparison of that PDC against a corresponding, established health advisory from a number of recognized sources (including the EPA) before becoming a Tier 2 chemical for the purposes of the AWP program. Those health advisory sources include EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", ADEQ approved notification levels or equivalents derived and endorsed by ADEQ coming from other states' drinking water programs, the Department's health advisory list, or a health advisory derived from credible, peer-reviewed literature or state or Federal databases.

Comment 31: General Public

Ever heard of Flint, Michigan? Of course, everyone in the water sector has. And what was the root cause? A new potable water source that was less scaling (not more corrosive) than the previous source. Proper treatment adjustments were not made and previously scaled pipes were cleaned, thus leading to metals leaching, including lead. With the proposed rules coming on line,

what precautions are being made so as to prevent this phenomenon from happening? Most well waters here in Arizona are extremely hard; lots of water softeners in place. And municipalities, currently, do a decent job of controlling hardness via blending (when surface waters are also available) and chemical treatments. Now this new water source is going to be devoid of various ions that cause scaling; how is that to be controlled? Again, the waters do not have to be more corrosive, just less scaling, such that the saturation index is impacted and minerals are adsorbed back into solution.

ADEQ Response 31:

ADEQ appreciates the comment. The AWP program relies on the SDWA for corrosion control evaluation. However, R18-9-F832(D)(2) has specific requirements for ADEQ to ensure that the AWP program complies with corrosion. In addition, a guidance document is being developed to further address corrosion control issues and concerns. The AWP program is not designed to supplant the safeguards built into the Safe Drinking Water Act (SDWA), including those addressing corrosivity, lead and copper and others.

Comment 32: General Public

We strongly support the inclusion of a digital early warning system in the direct potable reuse regulations, as mentioned in Page 3228, Section 10 of the proposed rule. These systems are vital for real-time monitoring and quick responses to contaminants, ensuring public health and safety. In the Phoenix region, reusing wastewater is essential for our city's growth and financial success. As citizens in the Phoenix region, we strongly support a digital early warning system in our wastewater. It will enhance the reliability of treated water, reduce the risk of pollutants, and increase our confidence in water reuse. We commend ADEQ for prioritizing this requirement and encouraging its adoption in the final regulation.

ADEQ Response 32:

ADEQ appreciates the comment. Early warning requirements are retained in the AWP regulations and can be found in the final rule in R18-9-E824(B)(10) and R18-9-E831(B)(6)(j).

Comment 33: Interest Group

Requiring a wastewater system to deploy early-warning monitoring of the collections system does not fit with running an AWP. A wastewater utility may elect to conduct this step to assist with process control in operating its wastewater treatment process. However, the technology for early-warning systems relies on surrogate parameters and algorithms to correlate measured parameters to chemicals of concern. The technology is still relatively new to the industry and not what we would consider to be at a technological readiness level to be a requirement under rule.

ADEQ Response 33:

ADEQ appreciates the comment. The AWP Enhanced Source Control rule, at R18-9-E824, requires a form of early warning system and sets minimum standards for the system, but does not go so far as to prescribe a specific method, technology, or process. As

the AWP Roadmap explains, a utility can develop its own early warning system by deploying the required sensors, configuring software to detect events, and creating response rules, and additionally, emerging technology is available to provide real-time or near-real-time monitoring to detect and respond to chemical peak events. This flexibility reflects the nascent state of the technology by not restricting permittees in this effort. The Department is in the process of developing guidance documents that will provide more detail on the establishment of an early warning system.

Based on ADEQ's collaboration with direct potable reuse facilities in Singapore, Texas, and elsewhere – the Department believes that early warning systems are a necessary element of the program, and critical for protecting public health. While this requirement is a component of the final AWP rule, it was first proposed to ADEQ by the Technical Advisory Group (TAG) in their recommendations early in the design phase of the AWP program (*see* Heading No. 7, subheading "Stakeholder Engagement" of this NFRM for an in-depth discussion on the stakeholder engagement process in the development of the AWP program, including enhanced monitoring and early warning system requirements).

Because an effective early warning system is collection system-specific, ADEQ will work with the applicant during the application review process to ensure that the proposed system is adequate to meet the intent of the rule while remaining practical and implementable.

Comment 34: Utility

Concerning Enhanced Source Control at R18-9-E824, the existing technologies for early warning of discharges in collection systems are not sophisticated nor reliable enough to be able to detect and differentiate chemicals of concern from other wastewater parameters. Furthermore, online monitoring instrumentation and rapid test kits do not have the capability of detecting all constituents of concern.

ADEQ Response 34:

ADEQ appreciates the comment. The AWP rule, at R18-9-E824, requires a form of early warning system and sets minimum standards for the system, but does not go so far as to prescribe a specific method, technology, or process. This flexibility reflects the nascent state of the technology by not restricting permittees in this effort. However, based on ADEQ's collaboration with Direct Potable Reuse facilities in Singapore, Texas, and others – the Department believes that early warning systems are a necessary element of the program, and critical for protecting public health. Because an effective early warning system is collection system-specific, ADEQ will work with the applicant during the application review process to ensure that the proposed system is adequate to meet the intent of the rule while remaining practical and implementable. The Department is in the process of developing guidance documents that will provide more detail on the establishment of an early warning system.

Comment 35: Utility

Some large-scale systems collect wastewater from multiple agencies, several of which are not participants in the AWP program.

The AWPRA will not have jurisdiction to force agencies that contribute wastewater to the system but are not participants in the Advanced Water Purification Responsible Agency (AWPRA) program from more stringent requirements than currently exist. As an example, a utility that discharges wastewater to another utility's collection system that is connected to the main collection system under the AWPRA's jurisdiction will not have an obligation to maintain a list of non-domestic dischargers or inventories of chemicals used by commercial and industrial customers.

ADEQ Response 35:

ADEQ appreciates the comment. While the Advanced Water Purification Responsible Agency (AWPRA) is the applicant or permittee, it is made up of one or more partners which are all responsible for maintaining compliance with the requirements of the AWP program. Any agency, district, or wastewater treatment plant that contributes wastewater to the 'system' are considered to be "AWPRA Partners". The definition for an "AWPRA Partner" can be found at R18-9-A801, meaning "any entity that collects or provides treated wastewater to the AWP project, performs wastewater source control or treatment pursuant to this Article, or utilizes AWP project water as a source for delivery to a drinking water distribution system" (*see also* R18-9-B805 describing the AWPRA formation and the joint plan requirements). Therefore, the AWPRA is an entity composed of its AWPRA Partners, which, through a Joint Plan, must coordinate all procedures in compliance with the AWP program. The Joint Plan must include all AWPRA Partner responsibilities under the program and all enforcement and corrective actions taken should any AWPRA Partner violate the Joint Plan or a requirement of the AWP program.

Comment 36: Utility

Under R18-9-E824(B)(11), there is a requirement that the enhanced source control program be audited at least every five years. Will ADEQ provide guidance on components of the audit?

ADEQ Response 36:

ADEQ appreciates the comment. ADEQ will provide recommendations on conducting an audit in the guidance document addressing the Enhanced Source Control Program, which will be developed pursuant to R18-9-E824(D)(1); however, ADEQ will not develop specific requirements in rule or in the forthcoming guidance document on how an audit should be conducted. The Enhanced Source Control Program is specific to each AWPRA and an audit should take into account the program approved by ADEQ and the specific elements within that program.

Comment 37: Utility

Add the following language (in italics) to R18-9-E824(D)(1), "ADEQ shall develop and make available guidance on developing, conducting, and maintaining an enhanced source control program *and guidance on performing an audit of the enhanced source control program*."

ADEQ Response 37:

ADEQ appreciates the comment. ADEQ does not believe it is necessary to develop a separate guidance document on performing audits of the enhanced source control program. The rule, R18-9-E824, effectively serves as a checklist for the enhanced source control program. Additionally, the rule, in conjunction with the guidance document, provides details on developing, conducting, and maintaining an enhanced source control program (*see* R18-9-E824(D)(1)). For those reasons, ADEQ declines to adopt the recommendation by the commenter and believes that rule and guidance document will be sufficiently clear to demonstrate to the permittee the ongoing enhanced source control requirements.

Comment 38: Utility

Add the following language (in italics) to R18-9-E824(E), "An AWPRA shall form and maintain a source control committee that includes representatives *from each AWPRA partner that is required to implement an enhanced source control program*, that supplies treated wastewater to the AWP project or that owns and/or operates a water reclamation facility…"

ADEQ Response 38:

ADEQ appreciates the comment. Under R18-9-E824(B), an AWPRA applicant/permittee is the entity required to develop and maintain a locally authorized enhanced source control program. The definition of "AWPRA" is an "applicant or permittee, comprising one or more AWPRA partners, responsible for compliance with the requirements of the AWP program for a particular AWP project…" (*see* R18-9-A801(7)). Therefore, the AWPRA, itself, is the entity responsible for administering the enhanced source control program and "AWPRA partners" do not have separate programs, but are subject to the requirements under the program administered by the AWPRA entity they are a partner of.

ADEQ does agree with the commenter that the language in the proposed rule at R18-9-E824(E) can be modified to clarify that a source control committee shall include representatives from "each AWPRA partner that is part of the AWPRA's enhanced source control program". The language has been modified accordingly.

Comment 39: Interest Group

We are concerned with the strict requirement that the Direct Responsible Charge (DRC) be on-site at all times. We recommend that the language be adjusted to state that the DRC 'or their designee' must be available at all times. Additionally, the rule references that all collection and water reclamation facilities are operated by a grade 4 operator. We recommend Reclamation and Collections operations should be modified to apply in practical terms. Modifying the language to "operational oversight and management" could provide the necessary flexibility, ensuring that operations are managed effectively without mandating continuous hands-on control by highly certified personnel.

ADEQ Response 39:

ADEQ appreciates the comment. As with every component of the AWP program, ADEQ strives to balance optimal protectiveness

with reasonable practicality for permittees in order to ensure that the program is safe and implementable. ADEQ understands the interest of the commenter and critically re-examined the rule, determining that a change could, in fact, be made to the Advanced Water Purification Operator Certification rule, R18-9-B804, which better achieves a balance of ADEQ's overarching goal. Based on the recommendation, the rule language is changed in the following ways.

ADEQ added a definition for "Direct responsible charge proxy" as "an AWP shift operator who is designated by, and acts on behalf of, the operator in direct responsible charge when the operator in direct responsible charge is not onsite" (R18-9-B804(A)(6)). ADEQ made corresponding updates to subsection D, General Requirements, providing that "[a]n AWPRA shall ensure that…[a]ll facilities receiving treatment credit pursuant to R18-9-E828 have a full-time operator in direct responsible charge, or their proxy, onsite at all times during operation" (R18-9-B804(D)(1)(c)) and "...[w]hen any facility receiving treatment credit pursuant to R18-9-E828 is operated by a direct responsible charge proxy, the operator in direct responsible charge must be reasonably available to provide immediate direction telephonically, if necessary" (R18-9-B804(D)(1)(d)). The definition addition and corresponding updates to subsection D are intended to provide a practical pathway for operation of the AWP facility when the operator in direct responsible charge is unavailable – namely, the operator in direct responsible charge may delegate a proxy to perform functions in their stead so long as the operator in direct responsible charge makes themselves available, telephonically, if necessary to provide direction and guidance to the proxy.

Additionally, ADEQ believed it necessary to further clarify the requirements of the operator in direct responsible charge, given the proxy pathway provided for in the final rule. The language in subsection D is further updated to state that "[a]n AWPRA shall ensure…[a]ll facilities receiving treatment credit pursuant to R18-9-E828 have a full time operator in direct responsible charge onsite for at least two full shifts per day" (R18-9-B804(D)(1)(b)). This language clarifies ADEQ's intention for a facility to have employed, as a full-time operator, at least one operator in direct responsible charge who is primarily onsite performing the hands-on functions of their position, while accounting for the practicalities of other duties/training off-site that may be incumbent upon the operator in direct responsible charge.

The commenter also refers to the proposed rule's requirement that wastewater collection systems and wastewater treatment facilities are operated by a grade 4 operator. The commenter recommends modifying this requirement "to apply in practical terms". In response to this comment, and others exhibiting similar sentiments, ADEQ re-examined the language in the proposed rule and modified it as follows. Under the final rule, a wastewater treatment facility receiving AWP treatment credits "shall be operated by an AWP operator and an operator certified at the appropriate grade, and no grade lower, for the class of the facility pursuant to Chapter 5, Article 1 of this Title" (R18-9-B804(L)(2)(a)). Furthermore, a wastewater collection system that collects and conveys water to a wastewater treatment facility that is ultimately used as a treated wastewater supply to an Advanced Water Treatment Facility (AWTF) "shall be classified pursuant to R18-5-114 of this Title" (R18-9-B804(L)(2)(b)). These updates to subsection L

remove the outright requirement for a grade 4 operator for wastewater treatment facilities and wastewater collection systems, and instead link their operator requirements to those already established under A.A.C. Title 18, Chapter 5, Article 1. This update addresses the commenter's concern to modify these requirements "to apply in practical terms".

Comment 40: Utility

Additional water examination requirements for Grade 3 and 4 wastewater operators are too restrictive. With the qualifying experience and AWP certificate, a Wastewater Operator will have the full understanding of operator responsibility, training and response protocols for AWTF facility, the mere possession of an additional water certification is irrelevant.

ADEQ Response 40:

ADEQ appreciates the comment. R18-9-B804(K)(5) requires, among other experience requirements, all AWP certified operator applicants pass the advanced water treatment examination in order to be eligible for certification as an AWP operator. Subsection (F)(6), however, establishes an additional requirement for Grade 3 and Grade 4 wastewater treatment operator applicants, "For applicants with a Grade 3 or Grade 4 wastewater treatment operator certification, the examination shall include an additional component which tests knowledge equivalent to the Grade 3 drinking water treatment operator examination." ADEQ respectfully disagrees with the commenter in two ways. First, the commenter incorrectly states that this requirement is for an "additional water certification". The Grade 3 and Grade 4 wastewater operators are not required to possess additional drinking water treatment certification, but are required to take a separate version of the AWP operator's exam which includes an additional component that tests knowledge *equivalent* to that which is tested on a Grade 3 drinking water treatment operator examination (emphasis added). Therefore, there is no need or requirement in the AWP rule for these applicants to possess an additional certification.

Second, ADEQ disagrees that a demonstration of knowledge equivalent to a Grade 3 drinking water treatment operator is "irrelevant". AWP produces water of drinking water quality, which may be blended or distributed directly to customers. Because of this, knowledge of drinking water treatment is paramount for all operators at an advanced water treatment facility. The AWP program incorporates flexibility with operator certification by prescribing a pathway for Grade 3 and Grade 4 wastewater operators to become certified as AWP operators. However, ADEQ acknowledges that the wastewater treatment examination does not include all critical components relevant to drinking water treatment. The AWP examination, also, does not include all of these critical components, as they would be duplicative for Grade 3 and Grade 4 drinking water treatment operators. Therefore, the rule, in R18-9-B804(F)(6), prescribes an additional examination requirement in order to ensure that operators of AWP facilities possess the necessary expertise and qualifications to operate an advanced water treatment facility.

Comment 41: Utility

Requiring a Direct Responsible Charge (DRC) to be on-site at all times is impractical and does not provide enough flexibility to the utility in managing operations. The Proposed Rule implies that the DRC must be onsite for potentially 16 hours per day. If the

DRC is intended to be one person, that is not practical and creates redundancy with the shift operator. If the DRC is intended to be "multiple people" with a Grade 4 Drinking Water plus AWT certification, this puts a strain on utilities due to a statewide shortage of qualified operators and increased labor costs. It would better-serve the industry and workforce if the proposed rule language be amended to state that a DRC, or their designee, must be "available" at all times. The existing language will contribute to increased operational costs and operator fatigue.

ADEQ Response 41:

ADEQ appreciates the comment. Please see ADEQ Response 39.

Comment 42: Utility

The Rule references that all collection systems and water reclamation facilities are 'operated' by a grade 4 operator. We recommend Reclamation and Collections operations should be modified to apply in practical terms. Modifying the language to "operational oversight and management" could provide the necessary flexibility, ensuring that operations are managed effectively without mandating continuous hands-on control by highly certified personnel.

ADEQ Response 42:

ADEQ appreciates the comment. R18-9-B804(L) of the AWP program sets forth class and grade requirements relevant to AWP. This section has been updated following the release of the proposed rule. Previously subsection (L)(2) required that both a wastewater treatment plant supplying treated wastewater to an advanced water treatment facility (AWTF) and a wastewater collection system that collects and conveys wastewater as a supply to an AWTF be Grade 4 facilities for the purposes of Arizona Administrative Code (A.A.C.) Title 18, Chapter 5, Article 1. The final rule contains the following changes to this subsection: only a wastewater treatment facility “receiving AWP treatment credits under R18-9-E828 that supplies treated wastewater to an AWTF shall be a Grade 4 facility”; and wastewater collection systems that collect and convey wastewater as a supply to an AWTF shall only be classified “pursuant to R18-5-114”. In accordance with A.A.C. R18-5-104(A), facilities must have an operator certified at or above the grade of the facility. Modifying the language to “operational oversight and management”, as the commenter suggests, is contradictory to this requirement in 18 A.A.C. 5, Article 1.

Comment 43: Utility

The Draft Rule does not clearly align with the established Arizona Administrative Code requirements for treatment facility rating and operator for staffing. A Grade 4 Collections or Grade 4 Water Reclamation Plant (WRP) is allowed to be operated by one level below the grading of the plant, i.e. a Grade 3 operator.

ADEQ Response 43:

ADEQ appreciates the comment. ADEQ disagrees with the commenter that the Arizona Administrative Code (A.A.C.) allows a Grade 4 wastewater collection system or wastewater treatment plant to be operated by a Grade 3 operator. Without reference to a

specific citation in the code, ADEQ can only presume the commenter is referring to A.A.C. R18-5-104(A)(5) which permits the operator in charge of the facility to be certified at a grade no lower than one grade below the grade of the facility "in the absence of the operator in direct responsible charge". Therefore, the comment lacks the proper context for the provision, which does not allow for indefinite operation of a Grade 4 facility by a Grade 3 operator, but rather permits the operation only upon an "absence" of a Grade 4 operator.

The AWP program is distinct and separate from the requirements in Chapter 5, Article 1, except where expressly indicated otherwise. AWP is guided by the programmatic rules in 18 A.A.C. Chapter 9, Article 8. Under the AWP rule, a wastewater treatment facility receiving AWP treatment credits is required to be a Grade 4 facility (R18-9-B804(L)). Pursuant to R18-5-104(A)(5), a Grade 4 operator must operate that facility. The rule has been updated for collections systems, however, such that wastewater collection systems within an AWP project are not required to be Grade 4, but shall be classified pursuant to R18-5-114, and have an assigned operator according to the classification of the facility. Please note, too, that the rule has been updated since the proposed rule to provide an option for an "operator in direct responsible charge proxy" to operate the facility in the operator in direct responsible charge's stead, for a specific period of time defined in the rule (R18-9-B804(D)). The "proxy" is defined as an AWP shift operator "who is designated by, and acts on behalf of, the operator in direct responsible charge when the operator in direct responsible charge is not onsite" (R18-9-B804(A)(6)). Therefore, similar to the language in Chapter 5, a facility subject to the operations requirements under R18-9-B804 and subsection D, specifically, may be operated by one level below the operator in direct responsible charge in some circumstances, but not indefinitely.

Comment 44: Utility

The wastewater treatment operator examination, with the additional drinking water component on the test, is an overly restrictive pre-qualification requirement. This type of exam does not offer standardized ISO 17024 metrics that ensure validity, reliability, and legal defensibility of the certification exam process.

ADEQ Response 44:

ADEQ appreciates the comment. Generally, please see ADEQ Response 40 above. The Advanced Water Treatment Operator examination is being developed and designed by ADEQ to the same standard as existing Drinking Water and Wastewater examinations, including ensuring validity, reliability and legal defensibility.

Comment 45: Utility

At issue with Operator Certification at R18-9-B804, is the significant shortage of operators currently certified at the appropriate level to operate existing water treatment facilities. Increased requirements, although necessary, will continue to shrink that pool and may decrease interest. Many portions of the state do not have Grade 4 water or wastewater facilities currently which prevents candidates from obtaining qualifying experience. Modifying the prerequisites found in R18-9-B804(K) for advanced water

treatment operator candidates to allow those with a Grade 3 Wastewater Treatment operator certification would increase the potential candidate pool.

ADEQ Response 45:

ADEQ appreciates the comment and acknowledges the challenges of hiring certified operators. The Operator Certification rule provides a pathway for a Grade 3 wastewater treatment operator to achieve certification for an Advanced Water Purification Operator (AWPO) certification. Section (K)(4) of the Operator Certification rule sets forth requirements for an applicant to sit for admission to an AWPO examination, specifying that a Grade 3 wastewater treatment operator "shall have at least two years' experience operating a Grade 3 wastewater treatment facility" (R18-9-B804(K)(4)(c)). Subsection (K)(5) establishes the prerequisites for certification, upon passage of the AWPO examination, and provides that "[a]n applicant with Grade 3 wastewater treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator". A Grade 3 wastewater treatment applicant may earn "advanced water treatment qualifying experience" subject to subsection (K)(6) which provides options for demonstrating such experience. These options include operating a pilot facility, operating an AWP demonstration facility that is not distributing finished water for human consumption, experiential reciprocity, an apprenticeship under an AWP operator, or other experience as approved by the Department (R18-9-B804(K)(6)). This last option was added by ADEQ in response to comments received in the NPRM and intends to provide ADEQ with further flexibility in crediting qualifying experience that may not be fully contemplated in rule at this time, and acknowledges the commenter's concern surrounding implementability.

Comment 46: Utility

Additionally at issue with Operator Certification at R18-9-B804, please revise the language to state that the operator in direct responsible charge (DRC) or their designee shall be available at all times. As written, the language implies the DRC is on-site at all times (24/7).

ADEQ Response 46:

ADEQ appreciates the comment. Please see ADEQ Response 39.

Comment 47: Utility

Should R18-9-B804(K)(5)(d) list "Grade 4" wastewater treatment certification, not Grade 3? Grade 3 is already included in R18-9-B804(K)(5)(c).

ADEQ Response 47:

ADEQ appreciates the comment. Yes, the language in the final rule has been updated accordingly. R18-9-B804(K)(5)(d) now reads, "[a]n applicant with Grade 4 wastewater treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator".

Comment 48: Utility

ADEQ and permittees have made tremendous efforts to protect water supplies through Arizona's Aquifer Protection Permit (APP) compliance program and pretreatment including implementation of Best Available Demonstrated Control Technology (BADCT). The proposed increased requirements in the new rule considerably downplays and undermines any earned trust built with this program and the current delivery of high-quality reclaimed water delivered to schools, parks, golf courses, and numerous recharge facilities where it replenishes our aquifer. Much of this water makes its way back to the aquifer, where it is eventually reused as drinking water once again.

ADEQ Response 48:

ADEQ appreciates the comment. ADEQ's implementation of the AWP program is commensurate with the intention of the Arizona State Legislature, acting on behalf of Arizonans, when it mandated ADEQ to adopt all rules necessary to establish and implement an AWP program (A.R.S. § 49-211). AWP authority derives separately from ADEQ's authority to implement and administer the Aquifer Protection and Use of Recycled Water programs, which are found in A.R.S. Title 49, Chapter 2, Articles 1 and 3. Therefore, the establishment of the AWP program does not undermine the efforts under these programs and they, in fact, have different objectives. The APP program is designed to protect aquifer water quality through discharge control, while the Use of Recycled Water programs provide permitting for certain classes and uses of recycled water. AWP is designed to take a treated wastewater source and further treat that source water to a drinking water standard for the purpose of expanding and diversifying a community's source water portfolio. Furthermore, the AWP program is implemented in the Arizona Administrative Code (A.A.C.) in Title 18, Chapter 9, Article 8. Existing programs in Chapter 9 remain in force such as the Aquifer Protection and the Use of Recycled Water regulatory programs in Chapter 9 which provide a permitting framework for distribution and use of reclaimed water at schools, parks, golf courses, and elsewhere. Reclaimed water can still be utilized in accordance with Article 7, however, pursuant to the Legislative directive regarding AWP, ADEQ developed another option for water reuse which a community may decide to undertake depending on what best fits the needs and interests of a community. The ability for a water provider agency to make thoughtful determinations about the use of water in their service area will not be encumbered by ADEQ in this rulemaking, rather, ADEQ has, as the legislature intended, presented a viable, voluntary, new drinking water source for Arizonans. Therefore, under the AWP program, each applicant must be a responsible, holistic steward of the water resources in their portfolio and make decisions that are best for consumers and ecological areas, alike, within their service area.

Comment 49: Interest Group

We are particularly concerned about the potential dewatering of rivers and streams that currently receive treated effluent. Effluent discharge often serves as a critical source of water for riparian habitats, supporting biodiversity and maintaining ecosystem services. Advanced water purification could divert these flows, leaving rivers like the Santa Cruz and the San Pedro and wetlands like the

Gilbert Riparian Preserve and the Tres Rios Wetlands, among others, vulnerable to reduced volumes, which would harm aquatic and riparian ecosystems. While these ecological impacts may be beyond the scope of this rulemaking, none of these parallel processes will be implemented in a vacuum, and it is reasonable to at least acknowledge potential impacts and point to processes through which they will be addressed. The rules could account for these unintended consequences and provide strategies to mitigate impacts on environmental water needs.

ADEQ Response 49:

ADEQ appreciates the comment. The Department believes the implementation of the AWP program is commensurate with the intention of the Arizona State Legislature (acting on behalf of Arizonans) when it mandated ADEQ to adopt all rules necessary to establish and implement an AWP program (A.R.S. § 49-211). The Department designed the AWP program using seven guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. This careful balancing led to a rule that provides for, and encourages, flexibility in implementation, based on the understanding that ADEQ is not the proper entity to determine what individual water portfolios look like for water provider agencies across the State. The Department believes that the ability for a water provider agency to make thoughtful determinations about the use of water in their service area should not be encumbered by ADEQ in this rulemaking. Instead, ADEQ should, as the legislature intended, develop and present a viable, voluntary and new drinking water source for Arizonans, derived from the careful processing of treated wastewater. Therefore, under the AWP program, each applicant must be a responsible, holistic steward of the water resources in their portfolio and make decisions that are best for consumers and ecological areas, alike, within their service area and greater community.

Additionally, under the outreach requirements of the rule, there are multiple pathways and opportunities provided to the public to express their concerns and interests to a prospective or actual AWP permittee. ADEQ mandates each applicant/permittee provide the public with adequate and frequent communication and transparent opportunities to engage through easily accessible forums, including a publicly-accessible repository with public questions, comments, and responses, which shall be maintained for the lifetime of the AWP project (R18-9-B811(B)(1)(c)). Additionally, ADEQ mandates that every AWPRA applicant involve relevant stakeholders, and suggests that the stakeholder list include local environmental groups. The purpose of the outreach requirements in the AWP program are to provide myriad opportunities to engage, on a project-by-project basis, with the AWPRA, on the impact and effects of adopting AWP in a specific service area and greater community.

Comment 50: Interest Group

An issue is the management of waste byproducts generated during the purification process. Concentrate streams often contain high levels of salts, heavy metals, PFAS, and other pollutants. While the rules include some guidance on source control and treatment,

clear and enforceable guidelines for the safe disposal or reuse of these byproducts remain underdeveloped. Without robust waste management plans, the risks of secondary contamination to the environment are substantial.

ADEQ Response 50:

ADEQ appreciates the comment. The AWP rule does not modify or weaken existing requirements surrounding the management of waste byproducts, which are currently regulated by the state or Federal administrators under regulatory programs such as the Arizona Pollutant Discharge Elimination System (AZPDES) program and ADEQ's Solid and Hazardous Waste regulatory programs. In order for an applicant / permittee to properly dispose of any waste generated during the treatment process, it (including all respective partner entities) must comply with all existing regulations and processes established under the facility's waste management plan.

Comment 51: General Public

How many billions of taxpayer money are you going to waste on this project?

ADEQ Response 51:

ADEQ appreciates the comment. AWP is a voluntary program in which water provider agencies may choose to participate in after outreach and collaboration with their customers. Applicants must develop a Public Communications Plan which, among other requirements, ensures the applicant notifies all drinking water consumers of its intention to apply for an AWP permit and maintains communication with consumers throughout all major program phases (*see* R18-9-B811). ADEQ expects water provider agencies to determine whether AWP fits the needs of water customers in their respective service areas and to ensure that there is adequate customer demand, support, and ability to pay for any new Advanced Water Treatment Facility (AWTF).

The AWP program follows a fee-for-service model, deriving funding from applicants and permittees via hourly review rates for permit applications and related components as well as from annual fees. The costs charged through the program are commensurate with projected costs necessary to adequately support the program. The proposed fees are designed and calculated to be fairly assessed, imposing the least burden possible to parties subject to the fees.

Comment 52: Interest Group

We are concerned that some requirements of AWP are overly-burdensome and have the potential to make AWP unaffordable and infeasible for some communities. Our concern is from the perspective that the process of establishing new rules and regulations be fair, equitable, consistent, predictable, and consider the technological and economic cost-benefit in the development and application of rules that impact the public.

ADEQ Response 52:

ADEQ appreciates the comment. The guiding principles that governed this rulemaking take into account the need for balancing public health protection while, at the same time, making potable water affordable. The seven guiding principles are: i. protective

of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. Beyond the consideration and balancing of all the principles above, including public health protection and affordability, ADEQ further based its design of the AWP program on the best available science and consensus recommendation provided to the Department by stakeholders such as the Arizona utilities represented in the Technical Advisory Group (TAG), and other stakeholder engagement efforts (*see* Heading No. 7, subheading "Stakeholder Engagement" of this NFRM for an in-depth discussion on the stakeholder engagement process in the development of the AWP program). The holistic review of these sources, along with consultation and development with ADEQ's own subject matter experts yielded the program as it exists in the final rule. With that stated, ADEQ disagrees with the opinion that some program components are "overly-burdensome". ADEQ believes that all program components are tailored to balance the principles listed above, while ultimately providing a safe pathway for advanced water purification in Arizona.

Despite ADEQ's efforts, it is true that some Arizona communities may not be able to afford to participate in the AWP program at this time. The necessary requirements of the AWP program are accompanied by higher price tags than other less demanding and complex regulatory programs. ADEQ expects water provider agencies to determine whether AWP fits the needs of their constituents and to ensure that there is adequate customer demand, support, and ability to pay for any new advanced water treatment facility. However, looking forward, ADEQ anticipates the costs of the AWP program to decrease over time - or at least become more feasible - as key technologies become more affordable, additional funding sources become available, and there are continuous improvements in innovation, efficiency in operation, treatment, and beyond.

Comment 53: Interest Group

The proposed rules refer to AWP as a voluntary decision for a water provider. AWP could very well become an essential component of meeting a community's water demands. AWP being "voluntary" is an unacceptable basis for these over-reaching requirements that remain in the proposed rule.

ADEQ Response 53:

ADEQ appreciates the comment. The requirements in the final AWP rules are based on a variety of inputs including the Technical Advisory Group (TAG) recommendations, internal and external subject matter expertise, and extensive stakeholder engagement (*see* Heading No. 7, subheading "Stakeholder Engagement" of this NFRM for an in-depth discussion on the stakeholder engagement process in the development of the AWP program). The rule development process spans many years and the recommendation and feedback from hundreds of stakeholders, experts, practitioners, and regulators. This robust process forms the basis for the requirements in the final rule, not the fact that AWP is a voluntary program. AWP's voluntary nature has no bearing on ADEQ's development of a safe and reliable regulatory program.

Comment 54: Utility

The increased source control efforts come with additional financial burdens that may have an impact on future economic development where AWP will be used, either voluntarily or by necessity. These costs, in addition to the cost of constructing AWP infrastructure, will be passed on to customers. Much like the development of a maximum contaminant level (MCL) by the Environmental Protection Agency, financial impacts should be a consideration.

ADEQ Response 54:

ADEQ appreciates the comment. The guiding principles that governed this rulemaking take into account the need for balancing public health protection while, at the same time, making potable water affordable to customers. The seven guiding principles are: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth. The AWP program and its regulations were designed to achieve a careful balance between all of the principles, including between public health protection and affordability. The source control efforts outlined in the rule are a necessary element of the AWP program. Some Arizona communities may not be able to afford to participate in the AWP program at this time. ADEQ expects water provider agencies to determine whether AWP fits the needs of water customers in their respective service areas and ensure that there is adequate customer demand, support, and ability to pay for any new advanced water treatment facility and all adjacent requirements. However, ADEQ anticipates the costs of the program to decrease over time as key technologies become more affordable and there are continuous improvements in innovation, efficiency in operation, treatment, and beyond.

Comment 55: General Public

How will the costs described impact the cost of water for customers of utilities transitioning to AWP?

ADEQ Response 55:

ADEQ appreciates the comment. Constituents of a service area under a utility that has diversified their water portfolio through an AWP permit can expect the utility to communicate with them about any price adjustments due to AWP. AWP is a voluntary program in which water provider agencies may choose to participate in outreach and collaboration with their customers. AWP applicants must develop a Public Communications Plan which, among other requirements, ensures the applicant notifies all drinking water consumers of its intention to apply for an AWP permit and to maintain communication with consumers throughout all major program phases (*see* R18-9-B811). ADEQ expects water provider agencies to determine whether AWP fits the needs of water customers in their respective service areas and to ensure that there is adequate customer demand, support, and ability to pay for a new Advanced Water Treatment Facility (AWTF). Technologies typically used in AWP or direct potable reuse settings are in many cases, state-of-the-art and expensive. However, sourcing, buying, and conveying water to a service area's facilities can also

be expensive. Weighing those and other factors will be a part of any utility's calculations when considering AWP.

Comment 56: General Public

R18-9-A804(K)(5)(c) & (d) are exactly the same. I believe subsection (d) should be related to a Grade 4 Wastewater similar to (b).

ADEQ Response 56:

ADEQ appreciates the comment and the language in the final R18-9-B804(K)(5)(d) has been updated accordingly. Subsection (K)(5)(d) now reads, "[a]n applicant with Grade 4 wastewater treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator".

Comment 57: Utility

To be consistent with the definition of AWP, revise the definition of "Advanced Water Purification Responsible Agency Partner" to include the italicized words shown here: "…*delivery to a drinking water treatment facility* or a drinking water distribution system."

ADEQ Response 57:

ADEQ appreciates the comment. The definition of "Advanced Water Purification Responsible Agency Partner" already contemplates the recommended language from the commenter, "delivery to a drinking water treatment facility". A facility that delivers to a drinking water treatment facility under the AWP program would be the Advanced Water Treatment Facility (AWTF), which is already incorporated into the Advanced Water Purification Responsible Agency Partner definition as, "...any entity that…performs wastewater source control or treatment pursuant to this Article, or utilizes AWP project water as a source for delivery to a drinking water distribution system". Therefore, no additional language is necessary.

Comment 58: Utility

Based on the definition of "treated water augmentation," delete "directly to the distribution system" from the definition of "Blending."

ADEQ Response 58:

ADEQ appreciates the comment. ADEQ retains the language in the definition of "blending" in R18-9-A801(20) to maintain the additional clarification provided from the statement.

Comment 59: Utility

It is incorrect to state that raw wastewater "has not undergone any treatment." There are numerous wastewater pretreatment devices within Glendale's sewershed to minimize discharges of oil, grease, and/or sand into the municipal wastewater collection system. The definition should be revised (in italics): "…wastewater that is entering a Water Reclamation Facility *or Wastewater Treatment Plant* via a sewage collection system and which has not undergone any treatment…"

ADEQ Response 59:

ADEQ appreciates the comment. ADEQ has added the word "centralized" to the definition of "raw wastewater" (R18-9-A801(76)) in order to distinguish between pretreatment measures and those traditionally applied at a centralized Water Reclamation Facility. ADEQ notes that "Water Reclamation Facility" and "Wastewater Treatment Plant" hold the same definition (R18-9-A801(106)) and are used interchangeably throughout the rule. Therefore, there is no meaningful distinction between the two terms for the purposes of the AWP program.

Comment 60: Interest Group

We believe that no other local or county government should have the ability to create a rule that could restrict the reuse activity permissible by the State. We recommend adding a provision in the rule related to: "No local or county governments are allowed to create a rule that prevents a community or water provider from implementing AWP."

ADEQ Response 60:

ADEQ appreciates the comment. The Arizona Revised Statutes (A.R.S.) at section § 49-106 provides that the rules adopted by ADEQ "apply and shall be observed throughout this state" and local governing bodies may adopt ordinances and rules only insofar as those ordinances and rules "do not conflict with state law and are equal to or more restrictive than the rules of the department". Pursuant to the authority of this statute, the AWP program applies throughout the state and no local governing body may pass an ordinance or rule that conflicts with AWP or "restricts" its use, as the commenter states. A de facto prohibition on AWP would be considered a conflict of state law and therefore unenforceable. Because this provision exists in statute, ADEQ does not believe it is necessary to include the provision into the rule itself.

Comment 61: Utility

Will a new source approval (as specified in R18-5-505(B)(1)(d)) be required for AWTF effluent? Or is it "presumptively considered surface water" (as written in the proposed R18-9-A803)?

ADEQ Response 61:

ADEQ appreciates the comment. Yes, a new source approval will be required for the product water of an AWTF. The rule allows Advanced Water Treatment facilities (AWTFs) to produce two types of product water, "advanced treated water" or "finished water". "Advanced treated water" is defined at R18-9-A801(5), as the product of an AWTF which can then be delivered to an existing Public Water System (PWS) or Drinking Water Treatment Facility (DWTF) as a source water for further treatment under SDWA regulation. "Finished water" is defined at R18-9-A801(45), which can be introduced directly into a distribution system or served for human consumption without additional treatment, except for measures required to uphold water quality within the distribution system and all applicable SDWA requirements. In the "finished water" case, the AWTF would be considered a Public Water System under SDWA regulation, subject to all of the protections thereunder, including source water analysis. In the previous

case, “advanced treated water” would be considered a source water for an existing PWS / DWTF, where the SDWA safeguards would, likewise, apply. Additionally, “advanced treated water” and “finished water” are presumptively considered a “surface water” per R18-9-A803.

Comment 62: Utility

Will an Approval to Construct (R18-5-505) and Approval of Construction (R18-5-507) be required when an existing drinking water system is modified to receive AWTF effluent? This may include connection at or prior to the intake to an existing drinking water treatment facility or connection directly into a potable water distribution system.

ADEQ Response 62:

ADEQ appreciates the comment. The AWP program does not supplant or supersede the requirements under the Safe Drinking Water Act (SDWA), and all AWP facilities must comply with SDWA requirements. Any modification to an existing treatment process will require approval from the Department pursuant to A.A.C. R18-5-509. Additionally, please take note of a new rule to be added to Arizona Administrative Code (A.A.C.) Title 18, Chapter 5, Article 5, which will be entitled “Applicability of Advanced Water Purification Program” and placed at R18-5-510. This rule clarifies the inapplicability of R18-5-505 and R18-5-507 to AWPRAs, amongst other clarifications.

Comment 63: Local Government

We are concerned that the final AWP rules will be substantially weakened before publication based on the previously unpublished statement of achieving parity with drinking water rules. It is stated at 30 AAR 3186, under subtitle “Associated Rulemakings” that changes to Chapter 5 of Title 18 are based on the aim of achieving parity between drinking water regulations and AWP regulations. Considering all the constituents that are known to be or that could exist in wastewater and all the constituents not regulated by the SDWA, this is aiming substantially below the published Draft rules developed by a large number of stakeholders which were stricter than the drinking water rules.

ADEQ Response 63:

ADEQ appreciates the comment. The language in the Notice of Proposed Rulemaking (NPRM) referred to by the commenter above is as follows, “[t]he proposed changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The proposed changes in Chapter 5 aim to achieve parity between the two programs by clarifying, in each, how and where the program components are applicable.” The “Department” concedes that the use of the word “parity” is misleading. Put another way, the addition of R18-5-510 to Chapter 5, Article 5 clarifies which part(s) of, and when, the SDWA is applicable to AWP facilities and when AWP permitting and design requirements apply. These clarifying changes to the language in Chapter 5 will not weaken the

safeguards developed in the AWP program. On the contrary, the language addressing AWP in Chapter 5 requires AWTFs to be regulated by robust permitting and design requirements specific to AWP. It is also important to note that no changes to proposed language in R18-5-510 in Chapter 5, Article 5 have been made between the proposed and the final rule.

Comment 64: Local Government

We are concerned that Region 9 of the EPA may not have specifically commented or opined on the State's creative way to implement AWP regulations by superseding drinking water design criteria and permitting regulations and leaving detail to unpublished guidance. Please confirm that the EPA's opinion has been solicited, especially on paragraphs R18-9-803(A) and (B). Please share the EPA's opinions and comments on the proposed rules if any have been received. Please confirm if any of the EPA's concerns have been incorporated.

ADEQ Response 64:

ADEQ appreciates the comment. EPA has not been directly solicited to comment on the proposed rules. ADEQ is required to develop an AWP regulatory program pursuant to an Arizona State Legislative mandate, A.R.S. § 49-211, signed into state law in 2022. Therefore, the authority to develop the program is derived from state law, not Federal. The AWP program's rules provide guidance on how the program works in conjunction with the Safe Drinking Water Act (SDWA). It is important to note that nothing in the AWP program rules would negate or replace SDWA requirements. In the multi-year development of the AWP program, ADEQ conducted many stakeholder events, including a series of meetings with a Technical Advisory Group (TAG), consisting of industry and regulatory leaders in the wastewater, reuse, and drinking water fields, many of whom frequently work with the EPA and intimately understand the SDWA. Additionally, the Department had many conversations with the EPA regarding the draft program requirements and the progress of the rule development.

The AWP program is not designed to supplant the safeguards built into the SDWA. The rule allows Advanced Water Treatment Facilities (AWTFs) to create two types of product water, "advanced treated water" or "finished water". Advanced treated water is "water produced by an [AWTF]" (R18-9-A801(5)). Advanced treated water may be delivered to a public water system as a source, where it's blended with other sources such as groundwater and surface water and undergoes additional treatment prior to being distributed as drinking water to customers. The advanced treated water is only subject to regulation under the AWP program, but once it is delivered to a public water system, it becomes subject to the SDWA. Alternatively, finished water is defined as "water produced by an AWTF, or a drinking water treatment facility, and which is introduced into a distribution system or served for human consumption" (R18-9-A801(45)). Finished water can only be distributed to customers by the AWTF if the AWTF is, in addition to AWP, permitted as a public water system under the SDWA. Under this scenario, the finished water is subject to regulation under both AWP and the SDWA at the AWTF.

Comment 65: Local Government

"Raw Water" and “Treated Water" Augmentation are expressly defined. The document remains silent as to whether ATW water would be allowed to be introduced into the finished water reservoir of a groundwater treatment plant or surface water treatment plant. The response to Draft Rule Comment #88 indicated that ATW could enter the finished water reservoir and that traditional new source approval data would need to be obtained, and that additional guidance will be forthcoming, and that it would be treated as a blending situation.

Please confirm our interpretation of the meaning of this response. We believe that this would require a re-evaluation of the existing DWTF disinfection adequacy and lead and copper control strategies due to water quality of the combined streams being different in the magnitude and quality of TOC and other aspects, and potentially more flow within the same detention volume. It would also require a blending evaluation (between sources and AWP treated water) or a re--evaluation if blending for MCL compliance (arsenic or nitrate) was already in practice.

ADEQ Response 65:

ADEQ appreciates the comment. Additional clarity will be added in the guidance documents as the rule can not reasonably account for every possible situation and delivery/distribution scenario. The program has been created to be flexible to this end and the definitions contemplate the scenario described by the commenter. The rule allows Advanced Water Treatment Facilities (AWTFs) to create two types of product water, “advanced treated water” or “finished water”. While both of these types of product water are of the same quality, the types are determined by how an AWPRA utilizes the water and subject to different regulatory authority under the SDWA. Advanced treated water is “water produced by an [AWTF]” (R18-9-A801(5)). Advanced treated water may be delivered to a public water system as a source, where it’s blended with other sources such as groundwater and surface water and undergoes additional treatment prior to being distributed as drinking water through a distribution system. The advanced treated water is only subject to regulation under the AWP program, but once it is delivered to a public water system, it is regulated as drinking water under the SDWA. Alternatively, “finished water” is defined as “water produced by an AWTF, or a drinking water treatment facility, and which is introduced into a distribution system or served for human consumption” (R18-9-A801(45)). Finished water can only be distributed by the AWTF if the AWTF is permitted as a public water system under the SDWA. Under this scenario, the finished water is subject to regulation under both AWP and the SDWA at the AWTF. Put another way, “finished water” may be introduced at any location within the distribution system with proper consideration of the distribution system. Also, introducing ATW to a finished water reservoir would require a traditional new source analysis and approval. Lastly, other aspects mentioned in the comment above would also need to be re-evaluated in accordance with the SDWA.

Comment 66: Local Government

Arizona Revised Statutes 49-205 does not mention Local Authority (LA). When AWP facilities are overseen and regulated by

ADEQ, such confidential data should be available to the LA if the LA is involved with the administration of the drinking water program for other portions of the water distribution system. Local authorities should be specifically allowed to access wastewater quality, treated wastewater quality, water quality, or treatment process performance information marked "confidential business information". Information which deals with the existence, absence, or concentration of constituents and contaminants detected in treated wastewater used as a source for an AWP facility should be made exempt from confidentiality provisions and available to the public or LA upon request.

ADEQ Response 66:

ADEQ appreciates the comment. ADEQ has no plans to delegate administration of the AWP program. While some counties may continue to have delegation for their drinking water facilities, ADEQ will continue to regulate the AWP portion of the project. If a county operating a Drinking Water Treatment Facility (DWTF) is an AWPRA partner, there is an expectation that necessary (and in some cases, required) information would flow freely between the AWPRA partners. The "[a]vailability of information to the public" statute at A.R.S. § 49-205 is currently in place and applies to the AWP program. The statute does allow for "...[t]he existence or level of a concentration of a pollutant in drinking water…" to be public information, while also sealing any information that would "divulge the trade secrets of the person…".

Comment 67: Utility

The beneficial use of this water will be regulated by the Safe Drinking Water Act (SDWA), and as such, new rules proposed by ADEQ should not intentionally or unintentionally create standards or requirements that exceed the scope of the SDWA.

ADEQ Response 67:

ADEQ appreciates the comment. Due to the character and nature of the "treated wastewater" source or influent of the Advanced Water Treatment Facilities (AWTFs) regulated under the AWP program, standards and requirements that are outside the scope of the Safe Drinking Water Act (SDWA) are necessary and justified. Unlike traditional public water systems regulated under the SDWA that utilize groundwater or surface water as a source, AWTF source water is treated wastewater from water reclamation facilities. This source requires unique control in a way that neither the scopes of the Clean Water Act (CWA) nor the SDWA contemplate or address. Therefore, ADEQ disagrees that the new rules "exceed the scope of the SDWA" because AWP is a fundamentally different regulatory program from the SDWA, to which its own standards and requirements rightfully apply.

Comment 68: Utility

The process for obtaining a Demonstration Permit should be streamlined to allow parallel tracks for performing and submitting permit elements. This will encourage utilities and the public to interact on the subject of ATW and facilitate operator education and training on an operating system. According to R18-9-C817, an Advanced Water Purification Responsible Agency (AWPRA) applying for a Demonstration Permit must meet all the requirements of a full- scale permit, except for full-scale verification. While

the intent of this approach is to ensure thorough evaluation, the approach mandates the completion of both a one-year Initial Source Water Characterization (ISWC) and a Pilot study before granting a Demonstration Permit. This sequential approach (requiring the ISWC to be completed prior to final design and the one-year pilot) could delay entities seeking a Demonstration Permit by up to two years. This delay is particularly concerning given that a public outreach program with taste testing is the most effective path toward public acceptance. The two-year delay would mean the demonstrations might not commence until just before the full-scale facility comes online. Utilizing a robust pilot "skid" for the Demonstration Permit is a prudent way to fulfill the pilot's intent, while building trust and acceptance with the public and elected officials. A shorter timeline for obtaining the Demonstration Permit would be beneficial. Risk assessments should consider that the volume of water used for taste testing is small and each person is drinking the water only one-time.

ADEQ Response 68:

ADEQ appreciates the comment. Due to the sentiment in this comment and discussions with stakeholders and members of the Technical Advisory Group (TAG), ADEQ reduced the piloting requirement for Demonstration permits by adding the following language at (R18-9-C817(C)(1)(a)), "[t]he piloting requirements in R18-9-C815 may be abbreviated at the Director's discretion, but may not be of a period of less than 6 months." This occurred in the interim period between the draft rule and the proposed rule. While ADEQ does see value in engaging the public early, such engagement must be balanced with rigor to ensure the process is robust and safe. Demonstration permits in the proposed rule will allow a utility to serve water to the public as quickly as possible and create those opportunities while still being safe. Prior to serving the public, the demonstration facility must demonstrate an ability to successfully achieve water quality goals reliably. While that approach may increase the testing time period, the facility can simultaneously conduct the initial source water characterization and design/build the demonstration facility using the initial data without following a sequential approach.

Comment 69: Utility

As written, R18-9-C817(C)(4) conflicts with both R18-9-C817(A) which states a demonstration permit is for "non-distribution purposes" and R18-9-C817(B) which prohibits the introduction of advanced treated water into a drinking water distribution system. Change the language at subsection (C)(4) to: "The AWP operator shall operate the demonstration facility for public outreach, finished water tasting, and other related non-distribution purposes."

ADEQ Response 69:

ADEQ appreciates the comment. ADEQ acknowledges the rule could benefit from additional clarity. As such, the language in the final rule, R18-9-C817(C)(4), has been updated to the following: "An AWP operator shall operate the demonstration facility if the facility is utilized for the purpose of showcasing the AWTF for public outreach, finished water tasting, and other related non-distribution purposes."

Comment 70: Utility

To be consistent with the licensing timeframes and R18-9-C817(H), demonstration permits should be referred to in this section. For example: "The Department shall publish a notice of preliminary decision regarding the issuance or denial of a significant amendment, demonstration permit, or a final permit determination…"

ADEQ Response 70:

ADEQ appreciates the comment. The language in R18-9-C817(H) makes clear that demonstration permits are subject to the public participation requirements of R18-9-D820. However, ADEQ agrees that the language in R18-9-D820 can benefit from the addition of a reciprocal requirement. Therefore, the language in the final rule, R18-9-D820(A)(1), has been updated to refer to an AWP permit or AWP demonstration permit, explicitly: "The Department shall publish a notice of preliminary decision regarding the issuance or denial of a significant amendment or a final permit determination related to an AWP permit or AWP demonstration permit on its website."

Comment 71: Local Government

We support comprehensive initial and on-going (periodic) source water (wastewater) characterization. We do not support allowing pilot or full-scale demonstrations to commence before initial source water characterizations have been completed and before comprehensive and complete testing objectives have been identified and accepted by ADEQ. Wording at R18-9-C815(B)(4) implies that pilot or full scale demonstration may commence before the initial source water characterization is complete which is equivalent to having an improperly conducted test, and/or a situation with insufficient oversight, and/or has the potential for allowing inappropriate design criteria to be implemented. We support the language at R18-9-C815(E) which allows the director to deny AWP permits where piloting was improperly conducted or insufficient to demonstrate compliance.

ADEQ Response 71:

ADEQ appreciates the comment. The language in R18-9-C815(B)(4) has been updated between the proposed rules and the final rules for clarity. Under no circumstances does the AWP program allow for delivery of advanced treated water or distribution of finished water before permitting pursuant to R18-9-C816. R18-9-C815(B)(4)(a) requires the Initial Source Water Characterization (ISWC) Report be submitted for review & comment as a component of the Pilot Study Plan by Non-National Pretreatment Program AWPRA applicants due to limited experience with the source water. Whereas, R18-9-C815(B)(4)(b) provides an allowance for National Pretreatment Program AWPRA applicants to forgo submission of the ISWC Report until submitting a permit application prepared pursuant to R18-9-C816, later in the process.

Credit to the experience National Pretreatment Program AWPRAs have with their source water is the reason for this disparity. Ultimately, both categories of applicants will have to submit the ISWC Report, the Pilot Study Plan and Report, and all permit application requirements for review. AWPRAs who elect to forgo submitting an ISWC report as part of the Pilot Study Plan or

who elect to conduct the pilot and full scale verification at the same time build their facilities at risk of permit application denial, should the application information show a failure to meet standards, faulty treatment train design, or any other inadequacy.

Comment 72: Local Government

We support language allowing the ADEQ director to deny an AWP permit based on non-compliance with the ISWC requirement, or improperly conducted, or in cases of insufficient data.

ADEQ Response 72:

ADEQ appreciates the comment.

Comment 73: Local Government

We support language in R18-9-804(I)(3)(F) and R18-9-823(B)(3) and (C)(2) that the ADEQ director may terminate an AWP permit in cases of false information or misleading reports.

ADEQ Response 73:

ADEQ appreciates the comment.

Comment 74: Local Government

We are supportive of the R18-9-E826(F) requirement for AWP permit applicants to select optimized demonstration (pilot) and full-scale AWTF treatment trains based on Tier 1 MCLs, a generated Tier 2 list, and a pass-through interference list.

ADEQ Response 74:

ADEQ appreciates the comment.

Comment 75: Local Government

We are supportive of the requirement in R18-9-E826(F)(2) for AWP permit applicants to control chemicals at the source which are not sufficiently treatable in the selected AWT treatment train.

ADEQ Response 75:

ADEQ appreciates the comment.

Comment 76: Local Government

We support demonstration-scale and full-scale verification requirements proposed in the rules.

ADEQ Response 76:

ADEQ appreciates the comment.

Comment 77: Local Government

We previously commented on the definition of "Pilot", which has now changed in a manner that warrants additional comment. Pilot also means full-scale [R18-9-C815(A)(1)] and full-scale can now occur in lieu of piloting. The response to Draft Rule Comment #89 is "'Full scale' means the complete implementation and operation of an AWP system that is designed to treat

wastewater to finished water standards and to meet the potable water demand of the community." This wording, along with other Initial Source Water Characterization (ISWC) provisions [R18-9-C815(B)(4)], appears to allow the permitting of a full-scale system before all chemicals of concern are identified in a ISWC and before all pilot objectives are known or before process capabilities have been verified over sufficient time. Such definitions and approach, made in the name of flexibility, would be an abdication of the responsibility to assure public health objectives and would be especially so if Tier 2 and Tier 3 chemical contaminant provisions of the Draft and Pre-publication rules were minimized or eliminated.

ADEQ Response 77:

ADEQ appreciates the comment. While the AWP program is designed to allow flexibility where appropriate, the program protects public health where appropriate as well. Under no circumstances does the AWP program allow for delivery of advanced treated water or distribution of finished water before an AWP permit is issued pursuant to R18-9-C816. Concerning Piloting and Full Scale Verification, the final rule language under both the pilot rule, R18-9-C815, and the full-scale verification rule, R18-9-F835, provide a pathway for an AWPRA applicant that builds their pilot facility to full-scale to submit a "Hybrid Pilot and Full-Scale Verification Plan" to the Department, following a consultation. Under the "Hybrid Pilot and Full-Scale Verification Plan", the AWPRA and ADEQ will work collaboratively to create a combined approach which fulfills the intention and purpose of both piloting and full-scale verification. Additionally, please note that the definition of "full scale" at R18-9-A801(46) does not, in and of itself, constitute permitted authority. Also, the language in R18-9-C815(B)(4) has been updated between the proposed rules and the final rules for clarity. Please note that the Tier 2 and 3 chemical controls continue to be in place in the final rule and are required for all AWP permits.

Comment 78: Utility

Full scale verification should follow current commissioning timelines used for treatment plants. Requiring a one-year Full Scale Verification is impractical and not the best use of highly treated water. The industry standard for bringing a full-scale drinking water plant online, including treatment plants for Superfund sites, is generally 60-90 days. The required one-year Pilot Study already covers the seasonal water quality variations in source water. The primary goal of commissioning time for full-scale is to prove the equipment is functioning as designed as the treatment has already been validated in the pilot. In addition, not applying this very expensive highly treated water to the best beneficial use would be a poor public message especially considering the drought and shortage conditions.

ADEQ Response 78:

ADEQ appreciates the comment. There are many places in the AWP rule where the requirements are more stringent than existing federal requirements. The commissioning timeline is one such instance in which the current requirements are insufficient to adequately protect human health, under the rigorous standards of performance within the AWP program. Current commissioning

timelines within the Safe Drinking Water Act (SDWA), as the commenter refers to here, assume a surface water or groundwater source. The federal framework does not contemplate the use of treated wastewater as a source. The AWP requirement was determined upon critical consideration of this particular source. The one-year requirement in the rule intends to account for seasonal variability throughout a full year of facility operation, with the understanding that drinking water demand and treatment fluctuate over time and treated wastewater presents unique source water challenges not present at other drinking water treatment facilities.

Furthermore, the commenter alludes to redundant requirements in the program due to the piloting and the full-scale verification. This redundancy is no longer the only pathway for an AWP applicant (*See* R18-9-C815(A) and R18-9-F835(A)). The final rule language under both the pilot rule, R18-9-C815, and full-scale verification rule, R18-9-F835, provides a pathway for an AWPRA applicant that builds their pilot facility to full-scale to submit a "Hybrid Pilot and Full-Scale Verification Plan" to the Department, following a consultation. Under the "Hybrid Pilot and Full-Scale Verification Plan", the AWPRA and ADEQ will work collaboratively to create a combined approach which fulfills the intention and purpose of both piloting and full-scale verification, while acknowledging the need to avoid costly and repetitive work. There is no requirement mandating an applicant to perform both piloting and full-scale verification on the same treatment train, and the rule, in fact, accounts for flexibility in this area.

Finally, the rule does not preclude an applicant from beneficially using the advanced treated water produced at either the pilot or full-scale verification stage. An AWPRA can determine the best use for that water, including recharge or replenishment of water sources. The restriction in the rule is for delivering or distributing the water for public consumption. All other methods remain available for the AWPRA.

Comment 79: Local Government

We understand that counties will not be delegated authority with regard to the AWP program and that this separation is clear with regard to future AWTF facilities. Based on the response to Draft Rule Comment #136, we understand that WRFs that deliver treated wastewater to AWP facilities may be subject to future delegation agreements. Based on the response to Draft Rule Comment #123, it is not clear from the proposed rules whether existing, nor proposed drinking water treatment facilities that receive AWP treated water would remain delegated to certain Arizona counties or be addressed in a future delegation agreement. Based on the response to Draft Rule Comment #103, AWPRA facilities deemed part of a PWS and are defined as a DWTF in the proposed rules may remain delegated or will be addressed in a future delegation agreement.

ADEQ Response 79:

ADEQ appreciates the comment. Delegation agreements will be reviewed at the same time an AWPRA applicant begins pursuing an AWP permit. This will likely occur starting with the pre-application meeting under R18-9-C812 and will continue throughout the process, culminating in the permit issuance itself under R18-9-C816.

Comment 80: Local Government

We are in full support of the definition of "Treatment Barrier" as proposed. Our understanding is that current definition, if applied to a UV/AOP process, would require constant operation at the design dose in order to receive credit for contaminant removal. It is our further understanding that vendor algorithms or features that enable power reduction based on flow rate or contaminant concentration or surrogates such as UV transmittance or TOC would not meet this definition, and that this type of feature is inappropriate to meet the concept of a constant operation. The unacceptability of this vendor promoted feature should be addressed in rule and/or a guidance document. The response to Draft Rule Comment #77 indicated that R18-9-C816(G)(4) was modified to that end - thank you. However, this response does not fully address the issue. UV/AOP processes operating at less than full power will be in constant operation but will not produce maximum pathogen LRV or design levels of chemical contaminant removal. How will ADEQ assign treatment performance credits to UV/AOP when systems are operated at less than full power and when contaminant destruction rate constants are kept proprietary?

ADEQ Response 80:

ADEQ appreciates the comment. All operational conditions for AOP will be verified during validation (*see* R18-9-F832(D)(5)). Based on that study, credits will be assigned or not assigned, accordingly. Also, contaminant destruction rate constants are required in the application for permit. Proprietary information may be requested to be kept confidential in accordance with R18-9-B806(D).

Comment 81: Local Government

We understand that seven (7) guidance documents pertaining to design, implementation and maintenance of AWP systems are being prepared. We request that stakeholders and the public be allowed to comment on these guidance documents. It is not clear whether guidance documents will have additional process criteria. Minimum requirements need to be established in rule. Based on the proposed rules, there is a great need for additional and specific design criteria. The proposed rules are silent on unit process redundancy and reliability requirements. The public would benefit from published unit process criteria for each type of treatment plant situation; raw water augmentation, treated water augmentation, entry into finished water reservoirs (if permissible), scalping scenarios, etc.

ADEQ Response 81:

ADEQ appreciates the comment. ADEQ plans to involve the public in the development of the guidance documents, as is typical for ADEQ's development and publication of guidance outside of rule. The AWP regulations are designed to provide the necessary, minimum requirements under the program, while leaving flexibility to the AWPRA where possible. The Minimum Design Criteria rule states, "[i]n addition to the requirements of this section, treatment process configurations shall be designed using good engineering practices. Treatment process configurations shall be approved if the AWPRA applicant can demonstrate that the treatment process configuration meets or exceeds the minimum design criteria in this section" (R18-9-F832(F)) and "ADEQ shall

develop and make available guidance on designing treatment process configurations…[additionally,]treatment process configurations designed in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices" (R18-9-F832(F)(1)-(2)).

Pursuant to the rule, all AWPRAs must follow the minimum requirements in rule, and shall additionally design treatment process configurations using "good engineering practices", defined as "a set of principles, guidelines, and standards that engineers follow to ensure their work meets high levels of quality, safety, efficiency and reliability. The principles, guidelines, and standards in an ADEQ-issued AWP guidance document constitute good engineering practice" (R18-9-A801(47)).

Therefore, the guidance documents, once released, will present more information on one possible pathway to achieving "good engineering practices" in the design of treatment process configurations, but is not the only way an AWPRA may do so. This same concept applies to other elements under the AWP program such as enhanced source control, piloting, etc. Because the elements in the guidance documents will not be requirements, it is not necessary to incorporate voluminous detail in the rule. Instead, ADEQ elects to enable AWPRAs to make site-specific decisions that best meets the needs of their projects.

Comment 82: Local Government

Previously, we commented that the AWP annual report in R18-9-E831 should be attached to the Public Water System Consumer Confidence Report (CCR). The response to Draft Rule Comment #128 indicated that a change to the proposed rules was unnecessary and that CCR requirements require "all these components to be included". We are requesting that clarity be added to the proposed rules since all that would be required is for someone to report "treated wastewater", or AWP product water as a source. Specifically, the public reporting requirement should say more than "an AWP source is being introduced". Ideally, the constituents analyzed for and constituents remaining should be reported for the AWP product water regardless if introduced as a source, or introduced to an existing DWTF finished water reservoir, or introduced directly to a distribution system. Each AWPRA agency member should be required to publicly report since the AWPRA agency is not a public water system subject to SDWA requirements.

ADEQ Response 82:

ADEQ appreciates the comment. It is important to understand that the AWP program is not designed to supplant the safeguards built into the Safe Drinking Water Act (SDWA). The AWP Annual Report, as defined in R18-9-E831, is designed to be a report between the AWPRA and ADEQ, not the AWPRA and the public. The AWP program rules allow Advanced Water Treatment Facilities (AWTFs) to create two types of product water, "advanced treated water" or "finished water". "Advanced treated water" is defined at proposed rule R18-9-A801(5). It is the product of an AWTF which can then be delivered to an existing Public Water System (PWS) or Drinking Water Treatment Facility (DWTF) as a source water under SDWA regulation. AWP "Finished water" is defined at R18-9-A801(45), which can be introduced directly into a distribution system or served for human consumption without

additional treatment, except for measures required to uphold water quality within the distribution system. SDWA - CCR reporting is required in both cases. Due to this fact, the AWP program does not have a requirement for AWPRAs to create an AWP-specific CCR, as this would be redundant. SDWA - CCRs are required to be published annually for systems under 10,000 people and a future CCR rule will require these be published twice a year for systems over 10,000 people. A water system must include a discussion of source water and water sourced from an AWPRA should be included in the CCRs as a source water. An AWPRA may choose to report the characterization of the treated wastewater influent or the advanced treated water but is not required to do so under this program.

Comment 83: Local Government

The requirement to have three diverse and separate treatment processes, including AOP and one (undefined) physical separation process, is presented in rule at R18-9-F832(C). Please identify the physical separation processes that would satisfy this requirement.

ADEQ Response 83:

ADEQ appreciates the comment. Acceptable physical separation processes in an AWP treatment train could include reverse osmosis, microfiltration, ultrafiltration, nanofiltration, coagulation, flocculation and others. A decision on which physical separation process is best left for the AWPRA and may be made in consultation with ADEQ during the application process. Additionally, please note AWP rule R18-9-C812 which provides for a pre-application conference with ADEQ at the request of the AWPRA applicant.

Comment 84: Local Government

Consider adding a requirement under the Minimum Design Requirements rule (R18-9-F832(D)(5)) that destruction rate constants specific to the reactor being proposed are documented in the AOP validation report. Without such reporting, it is not possible for a regulatory oversight agency to properly evaluate an AOP process for conditions other than that of the test conditions.

ADEQ Response 84:

ADEQ appreciates the comment. The Advanced Oxidation Process (AOP) approach presented in the rule is based on sound literature reviews that are accepted in three other states with direct potable reuse programs. The rule requires all AOPs achieve the 0.5-log reduction for 1,4-dioxane as a performance benchmark (i.e., action level) unless an alternative is used. This specific 1,4-dioxane target is based on current findings that demonstrated quality and quantity of specific trace organics removal when 0.5-log reduction of 1,4-dioxane performance is achieved. An alternative approach to demonstrating AOP functionality may be used as long as the approach shows the removal of constituents of concern similar to the initial 1,4-dioxane benchmark study (*see* R18-9-F832(D)(4)(b)).

In addition to performance demonstration, all AOP designs must address the major challenges of AOP processes such as scavenging of hydroxyl radicals by carbonates, bicarbonates, nitrites, nitrate, bromides and NOM, pH, and UV light absorption. The AOP's

efficacy in significantly reducing an approved indicator compound must be validated through pilot tests. These indicators should be ADEQ-approved and resistant to elimination through other treatment methods, including biological degradation, adsorption processes, RO/NF, and conventional oxidation techniques such as hypochlorite, chloramines, permanganate, or chlorine dioxide (e.g., 1,4-Dioxane). Each pilot study should involve spiking and measuring indicator compound removal (*see* R18-9-F832(D)(4)(b)(ii)). ADEQ expects spiking 1,4-Dioxane (i.e., reference compound) and calculating removal percentages to compare with other widely accepted advanced oxidation standards.

Comment 85: Local Government

R18-9-F832(D)(9)(d), pertaining to SCADA communications, appears out of place and is not related to subsections (9)(a), (9)(b), or (9)(c), which pertain to cross connection control.

ADEQ Response 85:

ADEQ appreciates the comment. The placement of the SCADA subsection at R18-9-F832(D)(9)(d) is not out of place as the requirement of the subsection (to develop and implement cross-connection control measures properly) includes a plan describing how the Advanced Water Treatment Facility (AWTF) SCADA system communicates and interoperates with the SCADA systems of all of the AWPRA's relevant facilities. In other words, a requirement to have all relevant AWPRA SCADA systems interconnect is, generally, a cross connection control measure.

Comment 86: Local Government

Total Organic Carbon (TOC) Management: R18-9-F834 proposes two approaches for management of TOC in AWTF product water and appear to establish a TOC limit of 2 mg/L or a site-specific value to control unregulated candidate (CCL5) disinfection by-products but makes no specific mention of whether compliance with existing DBP regulations is required. Assuming that compliance with all current and future DBP regulations is required, this approach seems to create less stringent alternatives to the conventional DWTF approach that TOC and other constituents must be removed (to an appropriate degree) so that all applicable current and future DBP regulations are complied with to the degree necessary for the water ages occurring.

a. Please confirm that DWTFs receiving Advanced Treated Water (ATW) as a source (raw water augmentation) would still need to demonstrate TOC reduction (for any combination of sources) to comply with the Stage 1 DBP rule in the SDWA that requires 15% to 50% TOC reduction, depending on alkalinity.

b. Please confirm that DWTFs receiving ATW into an existing finished water reservoir are exempt from TOC reduction requirements of the stage 1 DBP rules but must still comply with Stage 2 and future DBP regulations.

c. Please confirm that AWTFs contributing "finished water" directly to the distribution system (treated water augmentation) are allowed to have TOC levels at any concentration that does not cause DBP non-compliance, current or future, in the distribution system.

ADEQ Response 86:

ADEQ appreciates the comment. The commenter mentions that the Total Organic Carbon (TOC) Management rule or TOC rule "...makes no specific mention of whether compliance with existing DBP regulations is required…". Addressing that statement, and the rest of the comment first, it is important to understand that the TOC rule in the AWP program is program-specific and a separate, stand-alone requirement to any existing disinfection byproduct (DBP) regulations in the Safe Drinking Water Act (SDWA). In the AWP setting, DBP regulations in the SDWA will continue to be required alongside the AWP TOC regulations. In fact, mention and utilization of DBPs in the TOC rule is only in regards to the site-specific approach procedures that are, in and of themselves, only proposed to derive TOC values. Please note that the TOC rule has been updated for clarity between the proposed and the final rules. Below is an explanation of the TOC rule:

This rule requires an applicant or a permittee to manage TOC in one of two ways. The first approach ("Standard Approach") requires the applicant or permittee to maintain a limit of 2 mg/L in the advanced treated water. This approach requires no site-specific TOC sampling. The second approach ("Site-Specific Approach") requires the applicant / permittee conduct two procedures, deriving two preliminary TOC values, followed by a comparison of those values to, ascertaining the lower value of the two. This value becomes the site-specific TOC value. The two procedures are as follows:

(1) The "Trace Organics Removal Procedure" establishes a preliminary TOC value through the TOC sampling and characterizing of the original drinking water sources that feed water consumption in a service area that is then collected in sewersheds and routed to, and treated by, a WRF that is a source of treated wastewater for an AWTF. A preliminary TOC value for the Trace Organics Removal Procedure is derived through this process and is detailed in rule at R18-9-F834(C)(1).

(2) The "DBP Precursor Reduction Procedure" establishes a preliminary TOC value through conducting and then comparing two DBP and TOC - based sampling methods (*see* (a) and (b) below). Those methods (in and of themselves) result in two TOC values. The lower of the two values becomes the preliminary TOC value for the DBP Precursor Reduction Procedure. This is detailed further in rule at R18-9-F834(C)(2).

(a) Method 5710 C "Simulated Distribution System Trihalomethanes" (SDS-THM) establishes a TOC value in the advanced treated water. The TOC value is derived by both conducting Standard Method 5710 C and sampling for TOC in the advanced treated water monthly for one year. This results in 12 Total Trihalomethane (THM) values and 12 TOC values. The TOC values are then averaged. Likewise, the THM values are averaged. Thereafter, the THM average is compared to the corresponding Safe Drinking Water Act - Maximum Contaminant Level (MCL) for THM. If the average THM is below the THM MCL, then the *average TOC* for that year becomes the TOC value associated with Method 5710 C - SDS-THM. If the average THM is at or above the THM MCL, then the AWPRA may not use the *average TOC* for that year as the TOC value associated with Method 5710 C - SDS-THM. However, the AWPRA may adjust components of their operation and repeat the sampling above

until a 12-month average THM concentration in the advanced treated water is below the corresponding THM MCL. This method is detailed further in rule at R18-9-F834(C)(2)(a).

(b) "CCL5 - DBP Sampling Method" also establishes a TOC value in the advanced treated water. The TOC value is derived through monthly sampling of the advanced treated water for one year of both:

- TOC, and
- only the DBPs that exist in both EPA's "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables" (HA Table) (currently, that includes only Formaldehyde (CAS No. 50-00-0) and N-Nitrosodimethylamine (NDMA) (CAS No. 65-75-9)).

If the average sampling results for either DBP (Formaldehyde or NDMA) are lower than the corresponding health advisory in EPA's HA Table, then the *average TOC* for that year becomes the TOC value associated with Method CCL5 - DBP. If the average sampling results for either DBP (Formaldehyde or NDMA) are at or above the corresponding health advisory in EPA's HA Table, then the AWPRA may not use the *average TOC* for that year as the TOC value associated with Method CCL5 - DBP. However, the AWPRA may adjust components of their operation and repeat the sampling above until any one DBP (Formaldehyde or NDMA) is below the corresponding health advisory in EPA's HA Table. This method is detailed further in rule at R18-9-F834(C)(2)(c).

Thereafter, the applicant or permittee determines the lower of the two TOC values associated with Method 5710 C - SDS-THM & Method CCL5 - DBP (listed as "(2)(a)" and "(2)(b)" above, respectively). The lower TOC value becomes the preliminary TOC value for the DBP Precursor Reduction Procedure (listed as "(2)" above) (*See* R18-9-F834(C)(2)(d) for the corresponding rule language).

Then, the applicant \ permittee determines which of the two preliminary TOC values (from the Trace Organics Removal Procedure and the DBP Precursor Reduction Procedure, listed as "(1)" and "(2)" above) is lower. That value becomes the AWPRA's site-specific TOC Limit (*See* R18-9-F834(C)(3) for the corresponding rule language).

Upon issuance of a permit and AWTF operation, a permittee may switch between the two TOC Management approaches (Standard or Site-Specific) each calendar year (*see* R18-9-F834(A) for the corresponding rule language).

Also of note, ADEQ plans to, in the future, update the TOC rule when new versions of "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables" are established. At that time, ADEQ would simultaneously update the DBPs to be sampled pursuant to R18-9-F834(C)(2)(c)(i).

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 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:

Yes, this rulemaking establishes the Advanced Water Purification regulatory program, which includes issuing individual permits, pursuant to A.R.S. § 49-211. While the product (advanced treated water or finished water) of an Advanced Water Purification regulatory program facility is substantially the same, the facilities, activities and practices regulated by the program will be substantially different in nature due to the treated wastewater source, a multitude of viable technological process configurations, a swift pace of technological progress in the field and the custom nature of the regulated parties and their circumstances. Moreover, general permits are not "technically feasible" for the Advanced Water Purification regulatory program under A.R.S. § 41-1037(A)(3), and not used in the program.

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:

While the Safe Drinking Water Act (SDWA) (40 USC § 300f *et seq.*) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (*see* R18-9-A801) as a source, which is the subject of this final rule. In fact, SDWA only contemplates surface and ground water as sources for public water systems. Some Advanced Water Purification facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

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:

"Method 5710B"	R18-9-A802(B)(1); R18-9-F834(C)(2)(b)(v)
"Method 5710C"	R18-9-A802(B)(2); R18-9-F834(C)(2)(a) & (b)
"Analytical and Data Quality Systems"	R18-9-A802(B)(3); R18-9-A802(C)(1)
"Quality System"	R18-9-A802(B)(4); R18-9-A802(C)(2)
"Quality Assurance and Quality Control in Laboratory Toxicity Tests"	R18-9-A802(B)(5); R18-9-A802(C)(3)

"Quality Assurance/Quality Control"	R18-9-A802(B)(6); R18-9-A802(C)(4)
"Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices"	R18-9-A802(B)(7); R18-9-F832(C)(4)
"Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5"	R18-9-A802(B)(8); R18-9-F834(C)(2)(c)(i) & (ii)
"2018 Edition of the Drinking Water Standards and Health Advisories"	R18-9-A802(B)(9); R18-9-E826(D)(4), (5), (6) & (7); R18-9-F834(C)(2)(c)(ii)
"Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA"	R18-9-A802(B)(11); R18-9-E828(C)(9)
"Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR"	R18-9-A802(B)(12); R18-9-E828(C)(9)
"Characteristic of ignitability"	R18-9-A802(B)(13); R18-9-E824(B)(13)(a)
"Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility"	R18-9-A802(B)(14); R18-9-F832(D)(4)(b)(viii)

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 rule follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

Section

R18-9-B201. General Considerations and Prohibitions

ARTICLE 7. USE OF RECYCLED WATER

PART A. GENERAL PROVISIONS

Section

R18-9-A701. Definitions

PART B. RECLAIMED WATER

Section

R18-9-B702. General Requirements for Reclaimed Water

PART E. PURIFIED WATER FOR POTABLE USE

Section

R18-9-E701. Applicability of Advanced Water Purification Program

ARTICLE 8. ADVANCED WATER PURIFICATION

PART A. GENERAL PROVISIONS

Section

PART B. GENERAL PROGRAM REQUIREMENTS

PART C. PRE-PERMIT AND PERMIT REQUIREMENTS

PART D. GENERAL PERMIT REQUIREMENTS

PART E. CONSTITUENT CONTROL, MONITORING, AND REPORTING

PART F. TECHNICAL AND OPERATIONAL REQUIREMENTS

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

Section

A. No change

B. No change

C. No change

D. No change

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. A person may only create and maintain a connection between sewage treatment facilities, advanced water treatment facilities, and a potable water supply under an Advanced Water Purification permit issued pursuant to Article 8 of this Chapter.

F. No change

G. No change

H. No change

I. No change

J. No change

ARTICLE 7. USE OF RECYCLED WATER

PART A. GENERAL PROVISIONS

Section

R18-9-A701. Definitions

~~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~~1. "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~~2. "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~~3. "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~~4. "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~~5. "Industrial wastewater" means wastewater generated from an industrial process.

~~7~~6. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.

~~8~~7. "Open access" means access to reclaimed water by the general public is uncontrolled.

~~9~~8. "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~~9. "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~~10."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~~11."Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.

~~13~~12."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~~13."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~~14."Restricted access" means that access to reclaimed water by the general public is controlled.

~~16~~15."Sewage Treatment Facility" means a sewage treatment facility as defined in 18 A.A.C. 9, Article 1.

PART B. RECLAIMED WATER

Section

R18-9-B702. General Requirements for Reclaimed Water

A. No Change.

B. No Change.

C. No Change.

D. No Change.

E. No Change.

F. No Change.

G. No Change.

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~~, except as permitted under Article 8 of this Chapter.
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~~ Agricultural return flow directed onto an adjacent field or returned to an open water conveyance; or
        ii. ~~a~~ A discharge authorized by an individual or general NPDES or AZPDES permit.

I. No Change.

J. No Change.

K. No Change.

~~PART E. PURIFIED WATER FOR POTABLE USE~~

Section

~~**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.~~

ARTICLE 8. ADVANCED WATER PURIFICATION

PART A. GENERAL PROVISIONS

R18-9-A801. Definitions

In addition to the definitions in A.R.S. § 49-201, the following terms apply to this Article:

1. "Action level" means a value or criterion established in an Advanced Water Purification (AWP) permit at a critical control point that, when exceeded, triggers a required response or action to prevent a potentially hazardous event and will involve actions or responses such as additional monitoring, treatment adjustments, public notification or other corrective responses or actions.
2. "Acute exposure threats" means the increased imminent risk of adverse health effects, including infectious diseases and toxic effects from short-term exposures to contaminants in water which triggers public notice pursuant to A.A.C. R18-4-119, which incorporates 40 CFR §141.201 by reference.
3. "ADEQ" or "Department" means Arizona Department of Environmental Quality.

4. "Advanced Oxidation Process" or "AOP" means a set of chemical treatment processes whereby oxidation of organic contaminants occurs on a molecular level through reactions with hydroxyl radicals or similarly aggressive radical oxidant species.
5. "Advanced treated water" means water produced by an advanced water treatment facility (AWTF) and can be from one or more AWTFs.
6. "Advanced Water Purification" or "AWP" means the treatment or processing of treated wastewater to advanced treated water standards for the purpose of delivery to a drinking water treatment facility or a drinking water distribution system.
7. "Advanced Water Purification Responsible Agency" or "AWPRA" means the applicant or permittee, comprising one or more AWPRA Partners, responsible for compliance with the requirements of the AWP program for a particular AWP project and formed pursuant to R18-9-B805. An AWPRA must be a "person" under A.R.S. § 49-201(33).
8. "Advanced Water Purification Responsible Agency Partner" or "AWPRA Partner" means any entity that collects or provides treated wastewater to the AWP project, performs wastewater source control or treatment pursuant to this Article, or utilizes AWP project water as a source for delivery to a drinking water distribution system.
9. "Advanced Water Purification project" or "AWP project" means all facilities related to the advanced treatment of treated wastewater to drinking water standards operating under an AWP permit or demonstration permit.
10. "AWP project treatment train" means a treatment train designed to meet the requirements contained in this Article. In addition to the advanced water treatment facility (AWTF), portions of the water reclamation facility or drinking water treatment facility can be part of an AWP project treatment train.
11. "AWPRA facility" or "facility" means a drinking water treatment facility, advanced water treatment facility (AWTF), collection system, or wastewater treatment plant involved in the production of advanced treated water or finished water under this Article.
12. "Advanced Water Treatment Facility" or "AWTF" means a facility where treated wastewater is treated pursuant to the requirements of this article.
13. "Alert level" means a value or criterion established in an AWP permit at a critical control point that, when exceeded, alerts an operator that a potential problem may require a response.
14. "Amendment" means a change to the permit language resulting from a modification event.
15. "Aquifer Protection Permit" or "APP" 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.
16. "AWP" means Advanced Water Purification (*See* R18-9-A801(6)).

17. "Barrier" means a measure (technical, operational or managerial) implemented to control microbial or chemical constituents in advanced treated water.
18. "Best Management Practices" or "Best Practices" means a set of principles, guidelines and standards that an AWPRA follows to ensure high levels of quality, safety, efficiency and reliability. The principles, guidelines and standards in an AWP guidance document constitute Best Management Practice or Best Practice.
19. "Bioassay" means tests performed using live cell cultures or mixtures of cellular components in which the potency of a chemical or water concentrate is tested based on its effect on a measurable constituent, such as inhibition or the induction of a response (including carcinogenicity and mutagenicity). Bioassays can be used to measure synergistic, additive, and antagonistic interactions between compounds that may be present in a mixture.
20. "Blending" means the mixing of advanced treated water with another water source that will result in raw water augmentation or treated water augmentation directly to the distribution system. Blending does not apply to an Engineered Storage Buffer where storage of only advanced treated water takes place.
21. "Challenge test" means a study comparing a pathogen, surrogate parameter, or indicator compound concentration between the influent and effluent of a treatment process to determine the removal capacity of the treatment process. The concentration in the influent must be high enough to ensure that a measurable concentration is detected in the effluent (i.e., filtrate detection limit).
22. "Chemical" means any substance, used in or produced by a reaction involving changes to atoms or molecules, that has a defined composition and which is either naturally occurring or manufactured.
23. "Chemical peak" means an abnormal increase in the level of a chemical that represents a potential human health hazard that is the result of intentional or unintentional illicit discharges of chemicals to the sewershed. Chemical peaks are different from normal facility variation in water quality.
24. "Compliance schedule" means a list of required items assigned by the Department to the Permittee to be completed in the AWP permit.
25. "Constituent of Concern" means a potentially harmful or difficult to treat substance that could cause treatment interference, pass-through, or a violation of a treatment technique requirement, action level or Maximum Contaminant Level in the advanced treated water or finished water. Constituents of concern include Tiers 1, 2, and 3 chemicals.
26. "Constituent" means any physical, chemical, biological, or radiological substance or matter found in water and/or wastewater.
27. "Continuous online analyzers" means a monitoring sensor or device that monitors continuously or in real time (intervals of 15 minutes or less) and is positioned directly in the process flow or sample line to measure treatment performance.

28. “Critical Control Point” means a point in the treatment train that is specifically designed to reduce, prevent, or eliminate process failure, and for which controls exist to ensure the proper performance of that process, verified via monitoring.
29. “Demonstration permit” means an AWP permit that does not include distribution of finished water to drinking water consumers.
30. “Department” means the Arizona Department of Environmental Quality.
31. “Direct integrity test” means a physical test applied to a membrane unit in order to identify and isolate integrity breaches, such as leaks that could result in contamination of the filtrate.
32. “Director” means the Director of the Arizona Department of Environmental Quality.
33. “Disinfection treatment process” means a treatment process that either physically or chemically eliminates or inactivates pathogenic microorganisms.
34. “Distribution” means the act of delivering finished water through a network of pipes or other constructed conveyances from a facility to a consumer for human consumption.
35. "Distribution system" means the infrastructure used to carry out distribution.
36. “Draft permit” means a preliminary draft of a permit upon which the Director has not yet made a final permit determination.
37. “Drinking Water Treatment Facility” means a water treatment facility that is designed and operated to meet the requirements of the Safe Drinking Water Act.
38. “Engineered Storage Buffer” means a storage facility used to provide retention time before advanced treated water is introduced into a drinking water treatment facility or distribution system.
39. “Enhanced Source Control” means a program that enables the AWPRA to prevent constituents of concern, including target chemicals, from negatively impacting the AWTF, or the water it produces, by controlling them at their source.
40. “Exceedance” means an increase in the concentration of a constituent of concern beyond an established level such as an MCL, alert level, or action level.
41. “Excursion” means a deviation from established water quality boundaries for a process or at any point in a treatment train.
42. “Failure” means a condition in which an excursion or loss of performance occurs in one or more of the unit processes that results in a treatment train to not meet a performance metric or deviate from an approved operational range for parameters, necessitating a shutdown of a specific train or the entire plant for compliance.
43. “Failure Response Time” means the maximum possible time from when a failure occurs in the treatment system to when the quality of the final product water is no longer affected by the failure. Failure response time is calculated as a sum of the sampling interval, sample turnaround time and system reaction time, with overall failure response time based on the treatment process with the highest individual failure response time.

44. "Filtration treatment process" means a treatment process that physically separates a constituent of concern from water.

45. "Finished water" or "finished drinking water" means water produced by an AWTF, or a drinking water treatment facility, and which is introduced into a distribution system or served for human consumption without additional treatment, except for measures required to uphold water quality within the distribution system.

46. "Full scale" means the complete implementation and operation of an AWP system that is designed to treat treated wastewater to advanced treated water or finished water standards and to meet the finished water demand of the community.

47. "Good engineering practice" means a set of principles, guidelines, and standards that engineers follow to ensure their work meets high levels of quality, safety, efficiency and reliability. The principles, guidelines, and standards in an ADEQ-issued AWP guidance document constitute good engineering practice.

48. "Health Advisory" or "HA" means an estimate of acceptable levels for a chemical substance in drinking water based on health effects information that is:

    a. Published by EPA;

    b. Established in credible peer-reviewed literature or state or Federal databases;

    c. Established by the Department; or

    d. Established by another state's drinking water program as a "notification level".

49. "Impactful non-domestic dischargers" means a non-domestic discharger that has been determined by the AWPRA to discharge in such a way that will or does significantly impact the AWPRA's treatment processes and may or does significantly impact public health. Such determinations are made through a significant impact analysis pursuant to R18-9-E824(C).

50. "Indicator compound" or "Indicator" or "Performance Based Indicator" means a chemical found in treated wastewater that serves as a representative substance for a particular group of trace organic compounds, embodying their physical, chemical, and biodegradation properties.

51. "Initial Source Water Characterization" or "ISWC" means baseline monitoring of chemicals and pathogens performed on the treated wastewater effluent of a Water Reclamation Facility pursuant to R18-9-C814.

52. "Interference" means a discharge which alone, or in conjunction with a discharge or discharges from other sources, both:

    a. inhibits or disrupts the Water Reclamation Facility or the Advanced Water Treatment Facility, and

    b. is the cause of a violation of any requirement of the AWP permit.

53. "Local limit" means a set of specific, local, relevant, and enforceable limits, control measures, and best management practices established to protect AWPRA Facilities from pass-through or interference that could result in a threat to public health.

54. "Log reduction value" means the measure of a treatment train's or a treatment process's ability to remove or inactivate microorganisms such as bacteria, protozoa and viruses. A log reduction value is the log reduction validated or credited for a treatment process or treatment train.
55. "Log reduction" means the logarithm base 10 of the ratio of the levels of a pathogenic organism or other contaminant before and after treatment or a reduction in the concentration of a contaminant or microorganism by a factor of 10. One log reduction corresponds to a 90-percent reduction from the original concentration.
56. "Maximum Contaminant Level" or "MCL" has the same meaning set forth in Title 18, Chapter 4, Article 1 of this Title.
57. "Modification" means a change or changes to the treatment train or operations or any other component that will result in a change in the water quality of any process, unit of operation or to the advanced treated water or finished water.
58. "Municipal wastewater" means wastewater that contains predominantly domestic waste and may include commercial and industrial waste.
59. "Non-domestic sources" means both industrial and commercial sources.
60. "National Pretreatment Program" or "NPP" means the federal program referred to by this name under the Clean Water Act that is meant to protect infrastructure and receiving waters to a fishable and swimmable standard. The NPP is designed to reduce conventional and toxic pollutant levels discharged by industries and other nondomestic wastewater sources into municipal sewer systems and into the environment. The National Pretreatment Program's implementing regulations are found at Title 40 of the Code of Federal Regulations, Parts 122, 123, 124, and 403 and chapter I, subchapter N.
61. "National Pretreatment Program AWPRA" or "NPP AWPRA" means an AWPRA subject to R18-9-C813(B).
62. "Non-National Pretreatment Program AWPRA" or "Non-NPP AWPRA" means an AWPRA subject to R18-9-C813(C).
63. "Off-specification water" or "off-spec water" means water that has a quality that does not meet standards such as drinking water MCLs or other AWP programmatic requirements such as standards associated with surrogates or indicators.
64. "Operational barrier" means a barrier in the form of measures, including operations and monitoring plans, failure and response plans, as well as operator training and certification.
65. "Operational parameter" means a measurable property used to characterize or partially characterize the operation of a treatment process and must confirm the treatment barriers are intact to ensure the process is meeting the water quality and pathogen/chemical removal goals.
66. "Original drinking water" means drinking water that was being distributed prior to the introduction of advanced treated water or finished water.
67. "Oxidized wastewater" means wastewater that is treated to a level beyond simple removal of floating and suspended solids and meets the secondary treatment levels as described in R18-9-B204(B)(1).

68. "Ozone with biologically active filtration" or "Ozone/BAC" means an ozonation process immediately followed by biologically activated carbon.
69. "Pass-through" means the occurrence of a constituent of concern exiting Water Reclamation Facilities or Advanced Water Treatment Facilities in quantities or concentrations that have a significant potential to have serious adverse public health effects or to cause a violation of a treatment technique requirement, an action level or an MCL in the advanced treated water or finished water.
70. "Pathogen" means a microorganism such as bacteria, virus, or protozoa that can cause human illness.
71. "Pilot Study" or "Pilot train" or "Pilot" means a preliminary study and treatment train, of any scale representative to the full-scale facility, which is conducted to evaluate the feasibility, duration, cost, adverse events, and to improve upon the study design prior to performance of a full-scale project.
72. "Potentially impactful non-domestic discharger" means a non-domestic discharger that has been determined by the AWPRA to pose a potential to adversely impact treatment processes or the public health or which otherwise must be identified and tracked by the AWPRA pursuant to R18-9-E824(B)(4).
73. "Product water" means water exiting a specific treatment process or a combination of treatment processes.
74. "Public water system" has the same definition as the one incorporated by reference at A.A.C. R18-4-103 (40 CFR 141.2).
75. "Quantitative Polymerase Chain Reaction" or "qPCR" means a PCR-based technique that couples amplification of a target DNA sequence with quantification of the concentration of that DNA species in the reaction.
76. "Raw wastewater" means wastewater that is entering a Water Reclamation Facility via a sewage collection system and which has not undergone any centralized treatment. For the purposes of pathogen log removal, raw wastewater means wastewater prior to any point in a wastewater treatment process that may be credited for disinfection.
77. "Raw water augmentation" means introducing advanced treated water into the raw water supply upstream of a drinking water treatment facility.
78. "Real time monitoring" or "online monitoring" means treatment performance monitoring using instruments directly in the process flow or sample line that occurs continuously or semi-continuously in intervals of 15 minutes or less.
79. "Recalcitrant Total Organic Carbon" or "rTOC" means the Total Organic Carbon (TOC) found in finished water, which once used or consumed becomes wastewater. rTOC is unlike anthropogenic TOC present in wastewater because it may not be effectively eliminated by the Water Reclamation Facility, which leaves it as a constituent of the TOC in the treated wastewater.
80. "Redundancy" means the use of multiple treatment barriers to attenuate the same type of constituent, so that if one barrier fails, performs inadequately, or is taken offline for maintenance, the overall system will still perform effectively, reducing risk.

81. "Reference Dose" or "RfD" means an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.
82. "Reference pathogens" means Enteric viruses (specifically norovirus), Giardia lamblia cysts, and Cryptosporidium oocysts.
83. "Reliability" means the ability of a treatment process or treatment train to consistently achieve the desired degree of treatment, based on its inherent redundancy, robustness, and resilience.
84. "Resilience" means the ability of a treatment train to adapt successfully and restore performance rapidly when failure occurs.
85. "Robustness" means the ability of an AWP system to address a broad variety of constituents and changes in the concentrations of the constituents in the source water and resist a failure.
86. "Safe Drinking Water Act" means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).
87. "SCADA" or "SCADA System" means Supervisory Control and Data Acquisition system.
88. "Secondary treatment" means treated wastewater that meets the following treatment levels:
    a. Five-day biochemical oxygen demand (BOD5) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average), or carbonaceous biochemical oxygen demand (CBOD5) 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 BOD5, CBOD5, and TSS.
89. "Source water" means water that is characterized for chemical constituents and pathogens based on which treatment or source control is designed.
90. "Surrogate parameter" or "Surrogate" means a measurable chemical or physical property, microorganism, or chemical that has been demonstrated to provide a direct correlation with the concentration of an indicator compound or pathogen; that may be used to monitor the efficacy of constituent reduction by a treatment process; and/or that provides an indication of a treatment process failure.
91. "Target chemical" means any unregulated chemical causing a potential human health concern that may be present in the treated wastewater.
92. "Tier 1 chemicals" means contaminants regulated as Primary Drinking Water Maximum Contaminant Levels (MCLs) under 40 CFR Part 141 of the Safe Drinking Water Act, as incorporated by reference in R18-4-102, including MCLs and treatment techniques.

93. "Tier 2 chemicals" means AWP-specific contaminants pursuant to R18-9-E826 that are not regulated in the Safe Drinking Water Act, but may be present in treated wastewater and may pose human health concerns.
94. "Tier 3 chemicals" means Performance Based Indicators that are used to monitor the performance of AWP treatment trains.
95. "Total Organic Carbon" or "TOC" means the amount of organic carbon in a sample.
96. "Trace Organic Compounds" or "TOrCs" means a category of compounds such as pharmaceuticals, personal care products, and hormones.
97. "Treated wastewater" means any water or wastewater source of predominantly municipal origin coming from a Water Reclamation Facility and going to an Advanced Water Treatment Facility that has undergone treated wastewater characterization for either enhanced wastewater treatment or secondary wastewater treatment. For the purposes of the AWP program, treated wastewater originates from a Water Reclamation Facility that has liquid stream treatment processes that, at a minimum, are designed and operated to produce oxidized wastewater that achieves a defined source water quality for the purpose of additional treatment by an Advanced Water Treatment Facility.
98. "Treated water augmentation" means finished drinking water from an AWTF, permitted as a drinking water treatment facility, which is directly introduced into a distribution system for human consumption.
99. "Treatment barrier" means a barrier in constant operation, such as a physical barrier, that can be credited with treatment performance.
100. "Treatment interference" or "interference" means a discharge from a non-domestic source which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the AWPRA's treatment processes or operations and has significant potential for adverse public health consequences or significant potential to cause a violation of an action level, treatment technique or an MCL in advanced treated water or finished water.
101. "Treatment mechanism" means a physical, chemical, or biological action within each treatment process that reduces the concentration of a pathogen or a chemical contaminant.
102. "Treatment process" means a sequence of physical, chemical, or biological procedures applied to municipal wastewater or treated wastewater to remove pathogens and/or chemical constituents.
103. "Treatment technique" means a required process intended to reduce the level of a contaminant in water and/or drinking water.
104. "Treatment train" means a grouping of physical, chemical, and biological treatment technologies or processes that conditions or treats water to achieve a specific water quality goal.
105. "Upset" means unintentional and temporary noncompliance with a performance metric resulting in an excursion or loss of performance in one or more of the unit processes.

106. "Water Reclamation Facility" or "Wastewater Treatment Plant" means an arrangement of devices and structures for collecting, treating, neutralizing, stabilizing, or disposing of domestic wastewater, industrial wastes, and biosolids. For the purposes of the AWP program, a wastewater treatment plant does not include industrial wastewater treatment plants or complexes whose primary function is the treatment of industrial wastes.

107. "10^{-4} cancer risk" means the concentration of a chemical in drinking water corresponding to an excess estimated lifetime cancer risk of 1 in 10,000.

R18-9-A802. Program Review; Incorporation by Reference; Quality Assurance/Quality Control Methodologies

A. The Department shall review the AWP program upon any significant update to the incorporated by reference material in the rule, any significant update to Tier 2 health advisory values, any emerging scientific developments impacting AWP treatment mechanisms, or otherwise at the Director's discretion.

1. During its review, the Department shall assess the program rules and components for adequacy against currently available data and best available science.
2. As a result of its review, the Department shall determine whether any rule should be amended or repealed, and whether any material incorporated by reference should be updated.

B. The following materials are incorporated by reference and applicable in this Article unless specifically stated otherwise. The materials include no future editions or amendments, and are on file with the Department and as indicated below:

1. Standard Methods for the Examination of Water and Wastewater, Section 5710 B, "Trihalomethane Formation Potential (THMFP)", 24th ed. 2023, available at https://www.standardmethods.org.
2. Standard Methods for the Examination of Water and Wastewater, Section 5710 C, "Simulated Distribution System Trihalomethanes (SDS-THM)", 24th ed. 2023, available at https://www.standardmethods.org.
3. Standard Methods for the Examination of Water and Wastewater, Part 1000, "Analytical and Data Quality Systems", 24th ed. 2023, available at https://www.standardmethods.org.
4. Standard Methods for the Examination of Water and Wastewater, Section 7020, "Quality System", 24th ed. 2023, available at https://www.standardmethods.org.
5. Standard Methods for the Examination of Water and Wastewater, Section 8020, "Quality Assurance and Quality Control in Laboratory Toxicity Tests", 24th ed. 2023, available at https://www.standardmethods.org.
6. Standard Methods for the Examination of Water and Wastewater, Section 9020, "Quality Assurance/Quality Control", 24th ed. 2023, available at https://www.standardmethods.org.

7. ASTM International, Designation D4194-23, "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices", February 16, 2023, available at https://www.astm.org.
8. Federal Register, 87 FR 68066, "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5", available at https://www.federalregister.gov.
9. 2018 Edition of the Drinking Water Standards and Health Advisories, U.S. EPA, available at https://www.epa.gov.
10. Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, published January 2012, available at https://www.nepis.epa.gov.
11. Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR, published 2014, available at https://cfpub.epa.gov.
12. 40 CFR 261.21, "Characteristic of ignitability, published July 7, 2020, available at https://www.ecfr.gov.
13. "Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility". Brian Pecson, Shane Trussell, Elise Chen, Anya Kaufmann, & Rhodes Trussell. (2020).

C. Data collection, analysis, sampling, monitoring, reporting, and other related data quality assurance and quality control methodologies in this Article shall be conducted in accordance with the following applicable procedures in Standard Methods for the Examination of Water and Wastewater, 24th ed. 2023, available at standardmethods.org:

1. Part 1000, "Analytical and Data Quality Systems";
2. Section 7020, "Quality Control for Wastewater Samples";
3. Section 8020, "Quality Assurance and Quality Control in Laboratory Toxicity Tests"; and
4. Section 9020, "Interlaboratory Quality Control Guidelines".

R18-9-A803. Applicability of the Safe Drinking Water Act

A. For the purposes of the Safe Drinking Water Act, treated wastewater is presumptively considered surface water. Nothing in this section exempts a facility from applicable Safe Drinking Water Act requirements in Chapter 4 of this Title.

B. An AWTF that treats treated wastewater to advanced treated water standards for raw water augmentation may, at the Director's discretion, be considered part of a public water system for the purposes of compliance with the Safe Drinking Water Act and all applicable requirements of this Title.

C. An AWTF that treats treated wastewater to finished water standards for human consumption and distribution through pipes or other constructed conveyances is, or is part of, a public water system for the purposes of compliance with the Safe Drinking Water Act and all applicable requirements of this Title.

D. If the AWTF is considered a public water system under either subsections (B) or (C):

1. Permitting processes of this Article supersede the public water system permitting requirements in Chapter 5, Article 5, where they conflict, and
2. Design requirements of this Article supersede the public water system design requirements in Chapter 5, Article 5 where they conflict.

PART B. GENERAL PROGRAM REQUIREMENTS

R18-9-B804. Advanced Water Purification Operator Certification

A. Definitions. In addition to the definitions for this Article, the following terms apply to this section:

1. "Advanced Water Purification Responsible Agency administrator" or "AWPRA administrator" means an individual appointed or authorized to exercise managerial control over a designated AWP project.
2. "Advanced Water Purification certified operator" or "AWP operator" means an individual who has passed the AWP validated examination, meets the advanced water treatment qualifying experience requirements of this section, and holds a current certificate, issued by the Department, in either:
   a. The field of drinking water treatment with at least a Grade 3 or Grade 4 drinking water treatment certification; or
   b. The field of wastewater treatment with at least a Grade 3 or Grade 4 wastewater treatment certification.
3. "Advanced water treatment qualifying experience" means at least one year of hands-on experience in the operation of a minimum of three advanced water treatment processes, all within a single advanced water treatment train.
4. "AWP validated examination" means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the knowledge, skills, and abilities needed to operate an AWTF.
5. "Direct responsible charge" means an AWP operator who has overall responsibility for the day-to-day, hands-on operation of an AWTF.
6. "Direct responsible charge proxy" or "proxy" means an AWP shift operator who is designated by, and acts on behalf of, the operator in direct responsible charge when the operator in direct responsible charge is not onsite.
7. "AWPRA facility" or "facility" means a drinking water treatment facility, AWTF, collection system, or wastewater treatment plant involved in the production of advanced treated water.
8. "Onsite" means physically present at any AWPRA facility where a critical control point is operated and any AWPRA facility assigned treatment credits.
9. "Professional development hour" 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.

10. "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 (A.A.C. R18-5-101).

11. "Shift operator" means an AWP operator who is in direct charge of the operation of a treatment facility for a specified period of the day and must be present at the site during the duration of the shift.

12. "Shift" means an eight-hour period of time in one day.

B. Applicability. The rules in this subsection apply to owners and operators of AWPRA facilities in Arizona.

C. Certification Committee.

1. Upon the effective date of this rule, the Director shall establish a certification committee which may, at the Department's request, make recommendations and provide the Department with technical advice and assistance related to the AWP operator certification.

2. The AWP operator certification committee shall consist of eleven members, appointed by the Director as follows:

   a. An employee of the Department who shall serve as the executive secretary and who is responsible for maintaining records of all meetings,

   b. A currently employed operator with both Grade 4 water treatment certification and AWP operator certification,

   c. A currently employed operator with both Grade 3 water treatment certification and AWP operator certification,

   d. A currently employed operator with both Grade 4 wastewater treatment certification and AWP operator certification,

   e. A currently employed operator with both Grade 3 wastewater treatment certification and AWP operator certification,

   f. A currently employed wastewater collection system operator with Grade 4 certification,

   g. A currently employed water distribution system operator with Grade 4 certification,

   h. A faculty member teaching environmental engineering in the water or wastewater fields at an Arizona university or community college,

   i. A professional engineer, registered and residing in Arizona, engaged in consulting in the field of environmental engineering,

   j. An elected or appointed municipal official,

   k. A representative of a wastewater treatment facility with a design flow of greater than 5 million gallons per day (MGD) and which participates in the National Pretreatment Program, and

   l. A representative of a wastewater treatment facility with a design flow of less than 5 MGD, which is not a participant in the National Pretreatment Program.

3. The certification committee shall meet at least twice a year. At the first meeting of each calendar year, the certification committee shall select, from among its members, a chairperson and other officers as necessary.

4. A certification committee member shall serve a term of three years.

5. A certification committee member may be reappointed, but a member shall not serve more than three consecutive terms.

6. 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.

7. In the event of a vacancy caused by death, resignation, or removal for cause, the Director shall appoint a successor for the unexpired term.

D. General Requirements.

1. An AWPRA shall ensure all of the following:

   a. All facilities receiving treatment credit pursuant to R18-9-E828 are operated by AWP operators,

   b. All facilities receiving treatment credit pursuant to R18-9-E828 have a full-time operator in direct responsible charge onsite for at least two full shifts per day,

   c. All facilities receiving treatment credit pursuant to R18-9-E828 have an operator in direct responsible charge, or their proxy, onsite at all times during operation,

   d. When any facilities receiving treatment credit pursuant to R18-9-E828 is operated by a direct responsible charge proxy, an operator in direct responsible charge must be reasonably available to provide immediate direction telephonically, if necessary,

   e. An AWP operator makes all decisions about operational process control or system integrity regarding water quality or water quantity that affects public health,

   f. An AWPRA administrator who is not an AWP 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,

   g. All critical control points at any facility receiving treatment credit pursuant to R18-9-E828 are operated by an AWP operator, and

   h. The names of all current AWP operators are reported to the Department as a component of the Operations Plan submitted pursuant to R18-9-F836.

2. During the application period, or at any point thereafter, an AWPRA may submit a request to waive the requirement in subsection (1)(b) of this section if an operations plan, or amended operations plan, submitted to ADEQ pursuant to R18-9-F836 demonstrates that alternative oversight by an operator in direct responsible charge nevertheless achieves an equivalent degree of operational oversight and treatment reliability.

3. If ADEQ grants the waiver request in subsection (D)(2) above, the operator in direct responsible charge is not required to be onsite for at least two full shifts per day, but shall be able to monitor operations over the facility onsite within the period specified in the operations plan.

4. If the owner of a facility replaces an AWP operator in direct responsible charge with another AWP operator, the facility owner shall notify the Department in writing within 10 days of the replacement.

5. An AWP operator shall notify the Department in writing within 10 days of the date the AWP operator either ceases to operate a facility or commences operation of another facility.

6. An AWP operator shall operate each facility in compliance with applicable state and federal law.

E. Certification.

1. The Department shall issue an AWP operator certificate to an applicant if the applicant:

   a. Meets the experience requirements in subsection (K) for the applicable class and grade as outlined in this section,

   b. Passes a written advanced water treatment examination, and

   c. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.

2. To apply for AWP operator certification, an applicant shall submit to the Department the following information, as applicable, on a form approved by the Director:

   a. The applicant's full name, Social Security number, and operator number(s),

   b. The applicant's current mailing address, home and work telephone numbers and e-mail address,

   c. The applicant's place of employment, including the facility identification number,

   d. The class and grade of the facility where the applicant is employed,

   e. Proof of successful completion of the advanced water treatment examination and other applicable certificates, and

   f. Documentation of the applicant's experience required under this section.

F. Examination.

1. The Department shall provide examinations for certification of AWP operators. The Department may contract with third party examiners for administration of examinations. The Department shall ensure that a list of approved examiners is available upon request.

2. The Department shall validate all examinations before administration. Each examination shall include topics such as advanced treatment technologies, system maintenance, regulatory protocols, safety, mathematics, and general system management.

3. 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.

4. An applicant shall not be admitted to an examination without a valid picture I.D.

5. An individual must achieve a score of at least seventy percent on the examination in order to attain a passing grade.

6. For applicants with a Grade 3 or Grade 4 wastewater treatment operator certification, the examination shall include an additional component which tests knowledge equivalent to the Grade 3 drinking water treatment operator examination.

G. Certificate Renewal.

1. If the Department renews a certificate, the certificate is renewed for a three-year period, unless the AWP operator requests a shorter renewal term in writing.

2. An AWP operator may renew their certificate without retaking the exam in accordance with the following:

   a. Prior to the end of their certificate period by submitting a renewal form; or

   b. Following the expiration of the certification period, if the AWP operator submits a completed renewal form to the Department within 90 days of the expiration date.

3. To renew a certificate, an AWP operator shall complete and submit to the Department an AWP operator certificate renewal, on a form approved by the Director.

4. An AWP operator shall provide the following documentation to the Department, upon request, if necessary to verify:

   a. Completion of at least 30 professional development hours accumulated during the certification period, of which at least 10 professional development hours directly relate to the specific job functions of the AWP operator, and

   b. Verification, in writing, by the AWP operator's supervisor, or the entity that provides the education or training, of the AWP operator's completion of each professional development hour.

5. An AWP operator shall maintain documentation of completion of professional development hours for a minimum of five years.

6. As an alternative to the requirements of subsection (G)(2), an AWP operator may renew a certificate by taking and passing an AWP operator examination.

H. Certificate Expiration.

1. A certification is valid for three years and shall expire on the expiration date, which is the end of the certification period.

2. An expired certification may be reinstated if the renewal is submitted within 90 days of expiration date, in accordance with subsection (G)(2)(b).

3. A person with an expired certificate shall re-apply in accordance with subsections (F) and (G) in order to be certified as an AWP operator.

4. An AWP operator certificate is considered expired if the supporting certificate has been denied, expired, suspended, or revoked.

I. AWP Operator Certificate Denial, Suspension, Probation, and Revocation.

1. The Department may deny, suspend, or revoke an AWP operator certificate, and may place an AWP operator on probation.
2. The Department shall deny a certificate if the application is deficient, the applicant fails to obtain a passing score on the examination, or upon any other determination that the applicant has not met the requirements of this section.
3. The Department may revoke or suspend a certificate, or place an AWP operator on probation, if the Department determines that the AWP operator:
    a. Operates a facility in a manner that violates federal or state law;
    b. Negligently operates a facility or negligently supervises the operation of a facility;
    c. Fails to comply with a Department order or court order;
    d. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
    e. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
    f. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
    g. Endangers the public health, safety, or welfare;
    h. Fails to comply with the terms or conditions of probation or suspension; or
    i. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this section.
4. The action the Department takes under subsection (I)(3) may be made at the Department's discretion upon an examination of the individual facts and circumstances, the number of findings the Department makes under (I)(3), and upon consideration of other factors, such as but not limited to, additional aggravating circumstances not considered under (I)(3).
5. In performing any action under this subsection, the Department shall comply with the requirements in A.R.S. Title 41, Chapter 6, Article 10 and A.A.C. Title 18, Chapter 1, Article 2.

J. 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 AWP operator examination in Arizona or in another jurisdiction that administers an AWP examination that is substantially equivalent to the examination in Arizona and validated by the Department, and
2. Submits written evidence of the experience required under subsection (K).

K. Experience.

1. The Department shall consider the following criteria to determine whether an applicant has the qualifying experience required for AWP operator certification:
    a. The type of operator certification held by the applicant, and

b. Years of qualifying experience as a certified operator for a specific grade of facility.

2. An applicant shall provide evidence of certification as one of the following:

a. A Grade 3 drinking water operator;

b. A Grade 4 drinking water operator;

c. A Grade 3 wastewater operator; or

d. A Grade 4 wastewater operator.

3. An applicant shall provide evidence of qualifying experience in the applicable facility class.

4. An applicant shall meet the following requirements for admission to an AWP operator certification examination:

a. A Grade 3 drinking water operator shall have at least two years' experience operating a Grade 3 drinking water treatment facility.

b. A Grade 4 drinking water operator shall have at least one year of experience operating a Grade 4 drinking water treatment facility.

c. A Grade 3 wastewater operator shall have at least two years' experience operating a Grade 3 wastewater treatment facility.

d. A Grade 4 wastewater operator shall have at least two years' experience operating a Grade 3 or Grade 4 wastewater treatment facility.

5. An applicant that meets the requirements of this section and has passed the advanced water treatment examination shall be certified in accordance with the following:

a. An applicant with Grade 3 drinking water treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator.

b. An applicant with Grade 4 drinking water treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP operator in direct responsible charge.

c. An applicant with Grade 3 wastewater treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator.

d. An applicant with Grade 4 wastewater treatment certification with at least one year of advanced water treatment qualifying experience shall receive certification as AWP shift operator.

6. Advanced water treatment qualifying experience may be obtained through any of the following:

a. Operating a pilot facility;

b. Operating an AWP demonstration facility that is not distributing finished water for human consumption;

c. Experiential reciprocity pursuant to subsection (J) of this section;

d. An apprenticeship under an AWP operator on-site at an AWP facility including a pilot facility, demonstration facility, or AWTF; or

e. Other experience approved by the Department.

7. Experience working at an AWTF shall count towards qualified experience at a Grade 4 drinking water plant.

L. Class and Grade Requirements.

1. Drinking Water Treatment and Distribution Systems.

a. The Department shall classify a drinking water treatment facility receiving AWP treatment credits under R18-9-E828 as an AWTF.

b. The Department shall grade water distribution system AWPRA partners pursuant to A.A.C. R18-5-115(B).

2. Wastewater Treatment and Collection Systems.

a. A wastewater treatment facility receiving AWP treatment credits under R18-9-E828 shall be operated by an AWP operator and an operator certified at the appropriate grade, and no grade lower, for the class of the facility pursuant to Chapter 5, Article 1 of this Title. These operation requirements may be met by the same operator.

b. Wastewater collection systems that collect and convey wastewater to a wastewater treatment facility that is ultimately used as a treated wastewater supply to an AWTF shall be classified pursuant to R18-5-114 of this Title.

c. For a multi-facility system, the Department shall grade each facility in accordance with this subsection.

M. Transition.

1. Beginning two years from the effective date of the AWP programmatic rules in A.A.C. Title 18, Chapter 9, Article 8, all facilities receiving treatment credit pursuant to R18-9-E828 shall be operated by AWP operators certified in accordance with this section.

2. During the two-year transition period, all AWTFs shall be operated by a Grade 4 certified drinking water operator who has completed appropriate training, approved by the Department.

R18-9-B805. Advanced Water Purification Responsible Agency Formation; Joint Plan

A. An AWPRA shall be the entity responsible for complying with the requirements of this Article.

1. Only one AWPRA shall be designated for an AWP project.

2. An AWPRA must be a person under A.R.S. § 49-201(33).

B. Joint Plan. An AWPRA shall develop a Joint Plan describing all partner coordination procedures, including but not limited to, the following:

1. Partner Details.

a. Identification of each partner associated with the AWP project throughout the project's expected operational life,

b. A description of the roles and responsibilities of each partner, including designation of a lead partner responsible for fulfilling the requirements under the communication plan established in accordance with subsection (B)(4), and

c. The legal authority of each partner to fulfill its roles and responsibilities.

2. Procedures to ensure that the AWPRA will have knowledge of the current treatment and water quality monitoring status of any water reclamation facility delivering treated wastewater as a source to the AWP project,

3. Procedures to ensure the enhanced source control program complies with the requirements in this Article, pursuant to R18-9-E824,

4. A communication plan ensuring the timely dissemination of information regarding both treated wastewater and advanced treated water or finished water quality status and monitoring among all partners,

5. Procedures to provide access to the AWPRA and all partner facilities, operations, and records for inspection at any time by the Department,

6. Procedures to execute cross-connection control requirements, pursuant to Chapter 4, Article 2 and R18-9-F832 of this Article,

7. Procedures to execute corrosion control requirements, pursuant to Chapter 4, Article 1 and R18-9-F832,

8. Procedures to notify partners and the Department of treatment failure incidents and all corresponding corrective actions taken,

9. A plan outlining all enforcement and corrective actions taken should a partner fail to meet the requirements of this Article or violate the Joint Plan, and

10. Procedures to address changes to the AWPRA partners, including the addition of new partners and the removal of existing partners, in accordance with the requirements of the AWP program.

C. The AWPRA and all partners shall sign the Joint Plan.

D. The Joint Plan shall include copies of all necessary agreements executed to facilitate the operation of the AWP project, including but not limited to, copies of permits, memorandums of understanding, joint powers agreements, or intergovernmental agreements.

R18-9-B806. General Requirements

A. Delivery of advanced treated water or distribution of finished water is prohibited unless delivery or distribution approval is explicitly given to the AWPRA, either:

1. Through issuance of the AWP permit, if full-scale certification was completed and approved as part of the application; or

2. After satisfaction of the compliance schedule requirements pursuant to R18-9-C816(E).

B. Construction materials used at the AWTF, including materials used at AWPRA partner facilities, except for water reclamation facilities, that collect, treat, store, or distribute water for human consumption through pipes or other constructed conveyances, shall be lead-free as prescribed in A.R.S. § 49-353(B). This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

C. Treated wastewater used to supply an AWP project shall be municipal wastewater in origin.

D. Confidentiality of Information. In accordance with A.R.S. § 49-205, any information submitted to the Director pursuant to this Article 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.

R18-9-B807. Inspections, Violations, and Enforcement

A. The Department shall conduct inspections of a permitted AWPRA facility as specified under A.R.S. § 41-1009 and according to sanitary survey requirements in A.A.C. Title 18, Chapter 4, if applicable.

B. Any person who violates a provision of Article 8 of this Chapter, applicable provisions in Chapters 4 and 5 of this Chapter, or a condition of an AWP permit or AWP demonstration permit is subject to the applicable enforcement actions established under A.R.S. Title 49.

R18-9-B808. Recordkeeping

A. The AWPRA shall collect and retain the following information for at least ten years:

1. Copies of laboratory analyses and chain of custody forms,
2. The results of all analyses of chemicals and pathogens, including laboratory data, and
3. Copies of all plans and technical components prepared and submitted to the Department under the AWP permit application.

B. For the records described in subsections (A)(1) through (A)(3), a responsible agent of the AWPRA shall sign the following certification statement "I certify, under penalty of law, that the activities conducted pursuant to the requirements of Title 18, Chapter 9, Article 8 have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information to determine whether the applicable requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

R18-9-B809. Construction and Compliance with Plans

A. An AWPRA shall conform to all proposed plans and specifications when constructing any part of their pilot facility such that the facility accurately reflects the proposal as recorded.

1. Prior to issuance of an AWP permit or demonstration permit and when the pilot facility is the same as the proposed full-scale facility, any change in a proposed design that will affect advanced treated water or finished water quality, capacity, flow, or performance, shall be documented by the AWPRA applicant and submitted to the Department for review and approval in the form of revised plans and specifications, record drawings and a written statement regarding the reasons for the change.
2. The record drawings shall be drafted pursuant to R18-9-B810.

B. An AWPRA shall conform to all approved plans and specifications when constructing any part of their full-scale facility.

1. Following issuance of an AWP permit, any change in an approved design that will affect advanced treated water or finished water quality, capacity, flow, or performance, shall be submitted by the AWPRA to the Department for review and approval through a permit amendment.
2. Upon a change to an approved design, the AWPRA shall notify the Department and shall not proceed with any construction related to the design change without written approval from the Department, except in cases of emergency in which the AWPRA must act promptly to respond to an immediate and significant threat to human health and approval from the Department would unduly delay or prevent the AWPRA from addressing the threat. In instances of emergency, the AWPRA shall at the first available and safe moment, but not exceeding 30 days after the emergency:
    a. Notify the Department of the emergency,
    b. Detail the change made from the approved design, and
    c. Describe all response methods utilized during the emergency to protect advanced treated water quality.
3. An AWPRA's failure to notify and obtain the Department's approval of a change in an approved design is subject to enforcement as a permit violation pursuant to R18-9-B807.

R18-9-B810. Record Drawings

A. An Arizona-registered professional engineer shall clearly and accurately record or mark, on a complete set of working project drawings, each deviation from the original plan, and a written summary of each deviation which shall include, but is not limited to:

1. A description of the deviation,
2. The reason for the deviation, and

3. The projected impact the deviation will have on advanced treated water quality. If an impact is identified, the description shall be accompanied by an explanation on how the AWPRA will address the impact to maintain compliance with advanced treated water quality standards.

B. The set of marked drawings and written summary of deviations becomes the record drawings, reflecting the project as actually built.

C. The professional engineer registered in Arizona shall sign, date, and place their engineer's seal on each sheet of the record drawings and written summary of deviations and submit them to the Department as part of the permit application. The record drawings shall be accompanied by an engineer's certificate of completion, signed by the professional engineer.

D. Quality control testing results and calculations shall be submitted with the engineer's certificate of completion together with field notes and the name of the individual witnessing the tests.

R18-9-B811. Outreach; Public Communications Plan

A. An AWPRA applicant/permittee shall develop a Public Communications Plan for the purpose of providing drinking water consumers in the service area with education, awareness, and transparency related to the AWP project.

B. Public Communications Plan. The Plan shall include, but is not limited to, the following:

1. Consumer Notification.
   a. An AWPRA applicant shall notify all drinking water consumers of its intention to apply for an AWP permit for treatment and delivery of advanced treated water or distribution of finished water as a drinking water source.
   b. An AWPRA applicant/permittee shall maintain communication with the consumers throughout all major program phases, including planning, application, operations, and post-operations.
   c. Throughout the planning phase, the AWPRA applicant shall:
      i. Communicate to the public through the use of a local, publicly-accessible repository in which the AWPRA posts information about the AWP project, contains a forum for public question and comment, and a place for responses. Such a repository shall be active at the time the AWPRA applicant submits an AWP project permit application to the Department, and shall be maintained for the lifetime of the project,
      ii. Provide at least one notification by mail or by another Department-approved method to all of its consumers prior to a public meeting related to the AWP project,
      iii. Schedule and hold at least one public meeting during the planning stage of the AWP project,
      iv. Communicate to the public through at least one additional Department-approved method in accordance with subsection (B)(2) of this section, and

v. Provide all relevant information in all appropriate languages, as necessary, and provide contact information to the public on how a consumer may obtain translated written communications or request language assistance for written and oral communications.

d. During the application phase, the AWPRA applicant shall schedule and hold at least one public meeting no less than six months prior to distributing finished water from the AWP project.

2. Acceptable Methods of Communication. Department-approved methods of communication include the following:

a. Coverage through a local news outlet (e.g. television, newspaper, social media);

b. Community event(s) (e.g. setting up table/booth);

c. Local school(s) and school events;

d. Providing opt-in email or text notifications to customers;

e. Consumer confidence reports, water bill inserts, or other mail notification;

f. Neighborhood association meeting(s) and civic organizations; or

g. Other methods may be accepted at the Director's discretion.

3. Community Engagement.

a. An AWPRA applicant shall involve local government(s) throughout the AWP project phases, as necessary.

b. An AWPRA applicant shall develop a list of all relevant stakeholders and interest-holders that they intend to communicate with. Such a list shall, at a minimum, include local health authorities and medical professionals, and may additionally include:

i. City/town councils and boards;

ii. Local elected officials;

iii. Community organizations that represent disproportionately impacted communities,

iv. Local environmental groups;

v. Industry groups; or

vi. Schools/school boards.

c. An AWPRA applicant may conduct surveys, focus groups, or other means of collecting local information for the purpose of demonstrating community perception and opinion of the prospective AWP project introduction, and throughout all succeeding project phases.

4. Certification.

a. An AWPRA applicant shall certify the Plan meets the minimum requirements in this section.

b. The certified Plan shall include details demonstrating compliance with the requirements of this section, including, but not limited to:

i. Access to the publicly-accessible repository, such as a web address,

ii. Description of the methodology selected for communication,

iii. The numbers of mailers sent to the public,

iv. The number of government entities and other leaders engaged with,

v. A description of the public meetings held including dates, times, and methods of notice, and

vi. A description of any outreach conducted in other languages.

c. An AWPRA applicant shall submit a draft Plan as a component of the AWP permit application pursuant to R18-9-C816.

d. After being issued the AWP permit, and at least 30 days prior to distributing advanced treated water or delivering finished water, an AWPRA shall submit a certified final Plan to the Department pursuant to the compliance schedule set forth in their AWP permit.

PART C. PRE-PERMIT AND PERMIT REQUIREMENTS

R18-9-C812. Pre-Application Conference; Project Advisory Committee

A. Upon request of the AWPRA applicant, the Department shall schedule and hold pre-application conference(s) with the AWPRA applicant to discuss the requirements of this Article.

B. The Department may assemble a project advisory committee for the purpose of providing project-specific technical consultation to the Department throughout the application process.

1. The project advisory committee may be composed of appropriate experts selected by the Department to assist in review as necessary.
2. Experts may include, but are not limited to, toxicologists, State of Arizona licensed engineers, epidemiologists, microbiologists, chemists, and utility representatives.
3. Project advisory committee recommendations are advisory only.
4. Reviews by the project advisory committee shall be conducted within the applicable Licensing Time Frames in Chapter 1, Article 5 of this Title.

R18-9-C813. Applicant Pathways Depending on National Pretreatment Program Applicability

A. An AWPRA applicant shall submit the application components in the order and format set forth in this section, in addition to the order and format prescribed by the applicable rules within this Article.

B. National Pretreatment Program AWPRA. An AWPRA with all water reclamation facility partner(s) subject to the National Pretreatment Program may elect to either:

1. Submit the Initial Source Water Characterization Plan and the Pilot Study Plan to the Department for review and comment prior to the AWP permit application in the order and format set forth in R18-9-C814 and R18-9-C815; or
2. Submit the Initial Source Water Characterization Report and Piloting Report to the Department for approval as components of the AWP permit application pursuant to R18-9-C816.

C. Non-National Pretreatment Program AWPRA. An AWPRA with at least one water reclamation facility partner not subject to the National Pretreatment Program shall, throughout the pre-application period and in the order and format set forth in R18-9-C814 and R18-9-C815:

1. Submit the Initial Source Water Characterization Plan and the Pilot Study Plan to the Department for review and comment, and
2. Submit the Initial Source Water Characterization Report and Pilot Report to the Department for approval pursuant to R18-9-C816.

D. An AWPRA applicant that builds a pilot facility to full-scale and develops a Hybrid Pilot and Full-Scale Verification Plan, shall follow the submission requirements pursuant to R18-9-C815(A)(1)(c) and R18-9-F835(A)(1)(c) in lieu of the submission requirements in subsections B and C of this section.

R18-9-C814. Initial Source Water Characterization

A. An AWPRA applicant shall develop an Initial Source Water Characterization Plan and shall conduct initial monitoring of any treated wastewater proposed to be used as a source for an AWTF.

B. Initial Source Water Characterization Plan. An initial source water characterization monitoring plan, or Initial Source Water Characterization Plan, shall be developed and followed when conducting initial monitoring in accordance with this section.

1. A Non-National Pretreatment Program AWPRA applicant shall submit the Initial Source Water Characterization Plan to the Department for review and comment prior to conducting initial source water monitoring under this section. Along with the Initial Source Water Characterization Plan, the AWPRA applicant shall submit the following additional preliminary components to the Department for review and comment:
   a A draft Enhanced Source Control Plan prepared pursuant to R18-9-E824,
   b. A draft technical, managerial, and financial, or Technical, Managerial, and Financial Capacity Plan, prepared pursuant to R18-9-F833,

c. A proposed pilot train designed pursuant to R18-9-C815, and

d. A draft Public Communications Plan prepared pursuant to R18-9-B811.

2. A National Pretreatment Program AWPRA applicant may submit the Initial Source Water Characterization Plan to the Department for review and comment prior to conducting initial source water monitoring under this section, or otherwise shall submit the Initial Source Water Characterization Plan and Report to the Department as a component of the AWP permit application prepared pursuant to R18-9-C816. An AWPRA applicant that elects to submit the Initial Source Water Characterization Plan to the Department for review and comment prior to conducting initial source water monitoring under this section may also elect whether or not to submit the additional preliminary components listed in subsection (B)(1) to the Department for contemporaneous review and comment.

C. Monitoring. An AWPRA applicant shall conduct initial source water monitoring at all water reclamation facilities delivering treated wastewater as a source to an AWTF as applicable under R18-9-A802(C).

1. Monitoring shall be conducted at a location before any treatment process that will be used for a treatment credit in the AWP project and before the point of diversion to the AWTF.

2. Chemical Monitoring.

a. The AWPRA applicant shall collect a minimum of twelve monthly composite samples representative of seasonal variability.

b. If there is wide variability in a chemical concentration, meaning the coefficient of variation is greater than fifty percent, the AWPRA applicant shall reasonably increase the sampling interval in order to evidence this variability.

c. The AWPRA applicant shall sample for the following chemicals, excluding those identified on the projected chemical treatment list developed in R18-9-E826:

i. Tier 1 chemicals,

ii. Tier 2 chemicals pursuant R18-9-E826(D), and

iii. Any projected Tier 3 chemicals.

3. Pathogen Monitoring.

a. The AWPRA applicant shall utilize reference pathogens to monitor pathogen treatment within the AWP project and establish log reduction requirements consistent with either a standard log reduction approach or a site-specific log reduction approach pursuant to R18-9-E828.

b. Standard Log Reduction. If the AWPRA applicant selects the standard log reduction approach to pathogen control, no initial pathogen monitoring is required as part of initial source water characterization.

c. Site-Specific Log Reduction. If the AWPRA applicant selects the site-specific log reduction approach to pathogen control, the AWPRA applicant shall perform initial pathogen monitoring as part of initial source water characterization by following the prescribed sampling protocol pursuant to R18-9-E828(C).

D. In addition to the requirements of this section, initial source water monitoring under an Initial Source Water Characterization Plan shall be conducted using good engineering practices. Methods for initial source water monitoring shall be approved if the AWPRA applicant can demonstrate that the methods are sufficiently detailed and robust for the purpose of characterizing the treated wastewater used as a source for an AWTF in such a manner that informs the proposed pilot and full-scale treatment train design and serves as an accurate representation of the collection system.

1. ADEQ shall develop and make available guidance on conducting initial source water monitoring under an Initial Source Water Characterization Plan.
2. An Initial Source Water Characterization Plan developed in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

E. Report. An Initial Source Water Characterization Report shall be finalized within three years of the commencement of initial source water monitoring or at the Director's discretion. The Initial Source Water Characterization Report shall be prepared pursuant to R18-9-A802(C) and shall include, but is not limited to, the following:

1. The date, time, frequency and exact place of sampling,
2. The name of each individual who performed the sampling,
3. The procedures used to collect the samples,
4. The dates the sample analyses were completed,
5. The name of each individual or laboratory performing sample analysis,
6. The analytical techniques or methods used to perform the sampling and analysis,
7. The chain of custody records,
8. Any field notes relating to the information described under this subsection,
9. The sampling results which account for seasonal variability,
10. Corresponding laboratory data for all samples, and
11. A copy of the Initial Source Water Characterization Plan developed in subsection (B).

F. Report Submission.

1. A Non-National Pretreatment Program AWPRA applicant shall submit the Initial Source Water Characterization Report in subsection (E) to the Department for review and comment as a component of the Pilot Study Plan prepared pursuant to R18-9-C815. Additionally, a Non-National Pretreatment Program AWPRA applicant shall submit the Initial Source Water Characterization Report as a component of the AWP permit application prepared pursuant to R18-9-C816.
2. A National Pretreatment Program AWPRA applicant, if electing to submit a Pilot Study Plan to the Department for review and comment, may include the Initial Source Water Characterization Report in subsection (E) as a component, or otherwise shall submit the Initial Source Water Characterization Report as a component of the AWP permit application prepared pursuant to R18-9-C816.

G. The Department shall consider an AWPRA applicant's conformance with the initial source water characterization requirements in this Article as a component of the AWP permit application. The Director shall deny an AWP permit application if a determination is made that, under the Initial Source Water Characterization Plan, monitoring was improperly conducted or is otherwise insufficient to achieve the objectives of chemical and pathogen characterization, or if the Initial Source Water Characterization Report is incomplete or otherwise insufficient to demonstrate compliance with the Plan.

R18-9-C815. Pilot Study

A. An AWPRA applicant shall develop a Pilot Study Plan and conduct piloting on a pilot treatment train.

1. If an AWPRA builds a pilot facility to full-scale, the AWPRA applicant may, instead, opt to conduct piloting and full-scale verification simultaneously. If the AWPRA pursues this option, the AWPRA shall:
   a. Consult with the Department, and
   b. Develop and submit a Hybrid Pilot and Full-Scale Verification Plan to the Department for review and comment prior to conducting piloting and full scale verification under this section, R18-9-F835 and other requirements which are previously determined through consultation with the Department, and
   c. For the purposes of the permit application pursuant to R18-9-C816, submit the Hybrid Pilot and Full-Scale Verification Plan and a Hybrid Pilot and Full-Scale Verification Report in lieu of the submission requirements at R18-9-C816(A)(2)(g) and (h).
2. An operator of a pilot facility may be credited with advanced water treatment qualifying experience under R18-9-B804.

B. Pilot Study Plan. A Pilot Study Plan shall be followed when constructing the pilot treatment train and piloting in accordance with this section.

1. A Non-National Pretreatment Program AWPRA applicant shall submit the Pilot Study Plan to the Department for review and comment prior to conducting piloting under this section.

2. A National Pretreatment Program AWPRA applicant may submit the Pilot Study Plan to the Department for review and comment prior to conducting piloting under this section, an approach recommended by the Department, or otherwise shall submit the Pilot Study Plan to the Department as a component of the AWP permit application prepared pursuant to R18-9-C816.

3. The Plan shall include, but is not limited to, the following:

   a. The pilot study objectives,

   b. A description of the proposed pilot treatment train,

   c. The design criteria for each treatment component pursuant to R18-9-F832,

   d. A design report and drawing,

   e. An explanation of the pilot train's representation of the scale and the performance of the proposed full-scale AWTF and the selected treatment components therein,

   f. A time period for which the pilot study will be conducted of no less than one year of continuous operation,

   g. A monitoring plan which shall include, but is not limited to, the following:

      i. The proposed monitoring, instrumentation, and any additional requirements pursuant to R18-9-A802(C).

      ii. The proposed chemical critical control points designated pursuant to R18-9-E827(D),

      iii. The proposed pathogen critical control points designated pursuant to R18-9-E828(D), and

      iv. An advanced treated water sampling plan, and

   h. The proposed Tier 3 chemical list and associated critical control points prepared pursuant to R18-9-E827,

   i. The projected chemical treatment list prepared pursuant to R18-9-E826(F), and

   j. A TOC Characterization Plan of all original drinking water sources, pursuant to the Trace Organics Removal Procedure under R18-9-F834(C)(1), if the AWPRA selects the Site-Specific TOC Management Approach.

4. The Initial Source Water Characterization Report prepared pursuant to R18-9-C814(E) shall be submitted as follows:

   a. A Non-National Pretreatment Program AWPRA applicant shall submit the Initial Source Water Characterization Report as a component of the Pilot Study Plan, and

   b. A National Pretreatment Program AWPRA applicant may submit the Initial Source Water Characterization Report as a component of the Pilot Study Plan, or otherwise shall submit the Initial Source Water Characterization Report as a component of the AWP permit application prepared pursuant to R18-9-C816.

5. The pilot treatment train shall be selected from, and optimized in accordance with, the projected chemical treatment list developed pursuant to R18-9-E826(F) and pathogen log reduction values established pursuant to R18-9-E828.

6. If a Pilot Study Plan includes the discharge of effluent and the facility is subject to the APP program, an APP application for permit coverage shall be submitted and effective before pilot train operation.

C. Piloting.

1. Pathogen and chemical removal shall be demonstrated during the pilot study by conducting sampling in accordance with the established monitoring plan developed in subsection (B)(3)(g).
2. Sampling shall be conducted at a minimum of two locations, the influent and effluent of the pilot treatment train, in accordance with the proposed critical control points.

D. Report. At the conclusion of piloting a Pilot Study Report shall be prepared and submitted to the Department as a component of the AWP permit application pursuant to R18-9-C816. The Pilot Study Report shall include, but is not limited to, the following:

1. A demonstration of the effectiveness, reliability, and consistency of the treatment components in achieving pathogen and chemical removal, as well as TOC management in accordance with the Pilot Study Plan under subsection (B),
2. A list of water reclamation facility operational parameters and ranges that produced the AWTF treated wastewater influent water quality.

E. The Department shall consider an AWPRA applicant's conformance with the pilot study requirements in this Article as a component of the AWP permit application. The Director shall deny an AWP permit application if a determination is made that, under the Pilot Study Plan, piloting was improperly conducted or is otherwise insufficient to achieve the objectives of the pilot study, or if the Pilot Study Report is incomplete or otherwise insufficient to demonstrate compliance with the Pilot Study Plan.

F. In addition to the requirements of this section, the pilot study shall be conducted using good engineering practices. Methods for conducting the pilot study shall be approved if the AWPRA applicant can demonstrate that the methods sufficiently and consistently verify the performance of the chosen treatment components, provide the opportunity to evaluate the effectiveness of different types of treatment components, and inform the design of the full-scale AWP treatment train.

1. ADEQ shall develop and make available guidance on conducting an AWP pilot study.
2. An AWP pilot study conducted in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

R18-9-C816. Permit Application

A. An AWPRA applicant for an AWP permit shall provide the Department with the following information on an application form prescribed by the Director:

1. Application: Administrative Requirements.
    a. The names and mailing addresses of all AWPRA partners,

b. The names and mailing addresses of the representative of the AWPRA and owners and operators of all AWPRA partner facilities,

c. The legal description, including latitude and longitude, of the location of all AWPRA partner facilities,

d. The expected operational life of the AWPRA partner facilities,

e. The permit number for any other federal or state environmental permit issued to any AWPRA partner for that facility or site,

f. A copy of the AWPRA's Joint Plan and corresponding agreements pursuant to R18-9-B805,

g. A copy of the certificate of disclosure required by A.R.S. § 49-109,

h. Evidence that the AWTF complies with applicable municipal or county zoning ordinances, codes, and regulations,

i. Certification in writing that the information submitted in the application is true and accurate to the best of the AWPRA applicant's knowledge, and

j. All applicable fees established in 18 A.A.C. 14.

2. Application: Technical Requirements.

a. Detailed completed or prospective construction plans of the site, presented in legible form and of sufficient scale and detail to establish construction requirements and to facilitate effective review,

b. Record drawings pursuant to R18-9-B810,

c. Complete specifications to supplement the completed or prospective construction plans in subsection (A)(2)(a), including vendor data demonstrating validation information,

d. A design report which:

i. Describes the completed or prospective construction and the basis of design,

ii. Provides design data and other pertinent information that defines the work, and

iii. Establishes the adequacy of the design to meet the system demand and comply with the requirements of this Article, and

e. A Full-Scale Verification Plan, including data demonstrating scaling feasibility, prepared pursuant to R18-9-F835,

f. A draft Operations Plan prepared pursuant to R18-9-F836,

g. The Pilot Study Plan and Report prepared pursuant to R18-9-C815, if applicable under R18-9-C815(A)(1),

h. The Full-Scale Verification Report prepared pursuant to R18-9-F835, if applicable under R18-9-C835(A)(1),

i. A list of construction material used pursuant to R18-9-B806,

j. A demonstration of technical, managerial, and financial capacity pursuant to R18-9-F833,

k. An initial Enhanced Source Control Plan pursuant to the program developed in R18-9-E824,

l. The Initial Source Water Characterization Plan and Initial Source Water Characterization Report prepared pursuant to R18-9-C814,

m. A demonstration of compliance with all minimum design requirements pursuant to R18-9-F832,

n. The proposed pathogen and chemical action levels for ongoing monitoring pursuant to R18-9-A802(C),

o. The draft Public Communications Plan pursuant to R18-9-B811,

p. A Tier 2 analysis pursuant to R18-9-E826,

q. A Tier 3 Chemical list, associated critical control points and explanation pursuant to R18-9-E827,

r. Evidence of an APP authorizing any discharge from an AWTF that occurred, occurs or will occur during piloting, full-scale verification, operation or otherwise,

s. Demonstration that the AWPRA meets applicable A.A.C. Title 18, Chapter 4 and Chapter 5 requirements, and

t. Any other relevant information required by the Department to determine whether to issue a permit.

B. Draft Permit. The Department shall provide the AWPRA applicant with a draft of the AWP permit prior to publication of the Notice of Preliminary Decision pursuant to R18-9-D820.

C. Permit Issuance or Denial. The following requirements apply in addition to the requirements in R18-9-D823:

1. The Director shall issue an AWP permit, based upon the information obtained by or made available to the Department, if the Director determines that the AWPRA applicant is in compliance with this Article, and the applicable requirements in Chapter 4, Articles 1 and 2, and Chapter 5, Article 5.
2. The Director shall provide the AWPRA applicant with written notification of the final determination 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 AWPRA 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 AWP permit is denied under R18-9-D823, the reason for the denial with reference to the statute or rule on which the denial is based, and
   c. The AWPRA applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. The Department shall only approve an AWP permit for an AWPRA applicant when all AWPRA partners are in compliance with this Chapter and applicable Chapter 4 and Chapter 5 requirements, or are making satisfactory progress towards compliance under a schedule previously approved by the Department.

E. Post-Permit Issuance Compliance Schedule.

1. The technical components listed in subsection (E)(2) below are not required as part of the application in subsections (A) and (B) but are required prior to delivery of advanced treated water or distribution of finished water.
2. The following technical components shall be submitted in the time and manner set forth in a compliance schedule which shall be established by the Department under the AWP permit:
    a. The final design documents including as-built construction and configuration reports of all engineered elements of the facility prepared pursuant to R18-9-B810 and any document changes from what was proposed in the pre-construction application requirements.
    b. An Operations Plan prepared pursuant to R18-9-F836, including, but not limited to, a list of operators who are certified by the Department appropriately for all facilities within an AWP project, including any finished water distribution systems,
    c. The Full-Scale Verification Report prepared pursuant to R18-9-F835,
    d. A vulnerability assessment prepared pursuant to R18-9-F837,
    e. Compliance with approved plans pursuant to R18-9-B809,
    f. The final Public Communications Plan pursuant to R18-9-B811,
    g. The final Enhanced Source Control Plan pursuant to the program developed in R18-9-E824,
    h. An engineer's certificate of completion of the final inspection of the AWTF, signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department, and
    i. Any other relevant information required by the Department.
3. Compliance schedule items under subsection (E)(2) may require a permit amendment.

F. If a compliance schedule is included as part of an AWP permit, delivery of advanced treated water or distribution of finished water is prohibited until all delivery or distribution-critical post-permit compliance schedule items pursuant to subsection (E) are met and any associated permit amendments are in effect.

G. All design plans, specifications, and design reports submitted under this section shall be signed, dated, and sealed by an Arizona-registered professional engineer. The Arizona-registered professional engineer shall demonstrate the following information to the Department for each person principally responsible for designing the facility:

1. Pertinent licenses or certifications held by the person,
2. Professional training relevant to the design of an AWTF, water reclamation facility, or drinking water treatment facility,
3. Work experience relevant to the design of AWTF, water reclamation facilities, or drinking water treatment facilities, and
4. A verification letter from an independent party certifying the performance of a manufacturer's equipment or a product that the professional engineer is relying upon for treatment credits, along with the information required under subsections (G)(1), (2), and (3) of this section, for the independent party certifying the product.

R18-9-C817. Demonstration Permit

A. An AWPRA may apply for an AWP demonstration permit for the purpose of showcasing the AWTF for public outreach, finished water tasting, and other related non-distribution purposes.

B. Introduction of advanced treated water into a drinking water distribution system for human consumption is prohibited under an AWP demonstration permit.

C. Demonstration Permit Application.

1. An AWPRA applying for an AWP demonstration permit shall comply with all requirements of this Article, and all application requirements pursuant to R18-9-C816, excluding the requirement to demonstrate full-scale verification.
    a. The piloting requirements in R18-9-C815 may be abbreviated at the Director's discretion, but may not be of a period of less than 6 months.
    b. If an applicant reports significant failures at a critical control point during abbreviated piloting, the Director may require other measures.
2. The AWPRA applicant applying for an AWP demonstration permit shall submit a preliminary application containing the information required in subsection (C)(1) to the Department on an application form prescribed by the Director.
3. The Department shall, based on the preliminary application and in consultation with the AWPRA applicant, provide the AWPRA applicant notice of any additional information that is necessary to complete the application.
4. An AWP operator shall operate the demonstration facility if the facility is utilized for the purpose of showcasing the AWTF for public outreach, finished water tasting, and other related non-distribution purposes.

D. All design plans, specifications, and design reports submitted under this section shall be signed, dated, and sealed by an Arizona-registered professional engineer. The Arizona-registered professional engineer shall make the following demonstration to the Department for each person principally responsible for designing the facility:

1. Pertinent licenses or certifications held by the person,
2. Professional training relevant to the design of an AWTF, water reclamation facility, or drinking water treatment facility, and
3. Work experience relevant to the design of AWTF, water reclamation facilities, or drinking water treatment facilities.

E. Demonstration AWTFs shall only be built to pilot or full-scale.

F. Bench scale demonstration AWTFs are prohibited.

G. An operator of an AWP demonstration facility may be credited with advanced water treatment qualifying experience under R18-9-B804.

H. The public notice and public participation requirements in R18-9-D819 and R18-9-D820 apply to demonstration permits issued under this section.

I. The permit suspension, revocation, denial, and termination requirements in R18-9-D823 apply to demonstration permits issued under this section.

J. The permit term and permit renewal requirements in R18-9-D822 apply to demonstration permits issued under this section.

K. All design plans, specifications, and design reports submitted under this section shall be signed, dated, and sealed by an Arizona-registered professional engineer. The Arizona-registered professional engineer shall demonstrate the following information to the Department for each person principally responsible for designing the facility:

1. Pertinent licenses or certifications held by the person,
2. Professional training relevant to the design of an AWTF, water reclamation facility, or drinking water treatment facility,
3. Work experience relevant to the design of AWTF, water reclamation facilities, or drinking water treatment facilities, and
4. A verification letter from an independent party certifying the performance of a manufacturer's equipment or a product that the professional engineer is relying upon for treatment credits, along with the information required under subsections (K)(1), (2), and (3) of this section, for the independent party certifying the product.

R18-9-C818. Compliance Schedule

A. An AWPRA shall follow the compliance schedule established in the AWP 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. An AWPRA shall submit to the Department a compliance schedule item report documenting that the required action was taken within the time period specified in the compliance schedule of the AWP permit.
4. After reviewing the compliance schedule activity, the Director may amend the AWP permit, based on changed circumstances relating to the required action.

B. Distribution of advanced treated water is prohibited until the Department approves all compliance schedule items established under the AWP permit pursuant to R18-9-C816(E).

C. The Department shall consider all of the following factors when setting any additional compliance schedule requirements not prescribed under R18-9-C816(E):

1. The impact on advanced treated water quality,
2. The impact on drinking water customers,
3. The requirements for permit amendment, and
4. Any other factors determined at the Director's discretion.

PART D. GENERAL PERMIT REQUIREMENTS

R18-9-D819. Public Notice

A. AWP Permits.

1. The Department shall provide the entities specified in subsection (A)(2) with monthly written notification, by regular mail or electronically, upon the occurrence of any of the following:
   a. Receipt of AWP permit or demonstration permit applications;
   b. Preliminary and final determinations by the Director related to issuance or denial of an AWP permit or demonstration permit;
   c. Issuance of significant permit amendments;
   d. A determination made by the Director to revoke a permit; or
   e. Issuance of a permit renewal.
2. Entities.
   a. Each county department of health, environmental service 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)(1).

B. The Department shall additionally post the information referenced in subsections (A)(1) and (2) on the Department website: www.azdeq.gov.

R18-9-D820. 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 amendment or a final permit determination related to an AWP project on its website.
   a. Along with the public notice, the Department shall provide a copy of the draft permit along with a fact sheet for the AWP project.

b. The AWPRA applicant or permittee of the AWP project shall publish the notice of preliminary decision regarding the issuance or denial of a significant amendment or a final permit determination in a mailer sent to all drinking water customers within their service area.

2. The Department shall accept written comments from the public before a significant amendment or a final permit determination is made. Written public comment is limited to the scope of the issuance or denial of a significant amendment or a final permit determination under subsection (A)(1) of this section.

3. The written public comment period begins on the publication date of the notice of preliminary decision and extends for a minimum of 30 days.

B. Public hearing.

1. The Department shall provide, at minimum, a 30-day notice and shall conduct a public hearing to address a notice of preliminary decision regarding a significant 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 have 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 notice of the public hearing on its website and the AWPRA applicant or permittee of the AWP project shall publish the notice of public hearing in a mailer sent to all drinking water customers within their service area.

3. The Department shall accept written public comment until the close of the hearing record.

C. The Department shall respond in writing to all comments submitted during the public comment period.

D. The Department shall notify an AWPRA applicant or permittee of a significant amendment or final permit determination through regular or electronic mail.

1. Simultaneously, and in the same manner, the Department shall provide a notice of the amendment or determination along with the summary of response to comments to any person who submitted comments or attended a public hearing on the significant amendment or final permit determination.

2. The AWPRA applicant or permittee of the AWP project shall publish the final determination regarding the issuance or denial of a significant amendment or a final permit determination in a mailer sent to all drinking water customers within their service area.

R18-9-D821. Permit Amendments

A. The Director may amend an AWP 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 prescribed by the Director with the applicable fee established in A.A.C. Title 18, Chapter 14, explaining the facts and reasons justifying the request.
2. The Department shall process amendment requests following the licensing time-frames established under A.A.C. Title 18, Chapter 1, Article 5, Table 10.
3. An amended permit supersedes the previous permit upon the effective date of the amendment.

B. Significant Amendment.

1. Significant AWP permit amendments may include, but are not limited to:
   a. Changes to the enhanced source control program that will result in a change in the water quality of any unit of operation or the advanced treated water,
   b. Any modification to the facility that will result in a change in the water quality of any unit of operation or the advanced treated water,
   c. Any change to the critical control points,
   d. Reductions to monitoring,
   e. Changes to any approved blending plans,
   f. Significant source water quality changes that will result in a change in the water quality of any unit of operation or the advanced treated water,
   g. The addition or removal of an AWPRA partner from the AWPRA, and
   h. Authorization to deliver advanced treated water or distribute finished water following completion of post-permit compliance schedule items.
2. An AWPRA shall submit, along with the detailed permit amendment request in subsection (A)(1), an explanation of the proposed modifications as well as the safeguards that the AWTF will implement to ensure that the quality of the water served will not be adversely affected by any modification.

C. Minor Amendment. Minor AWP permit amendments may include, but are not limited to:

1. Correcting typographical errors,
2. Changing non-technical administrative information,
3. Correcting minor technical errors, such as locational information and citations of law,
4. Increasing the frequency of monitoring or reporting,
5 Making changes in a recordkeeping retention requirement, and

6. Changes to the treatment train, monitoring equipment, or any other component that is not a replacement of, or substantially similar to the approved components, but will not result in a change in the advanced treated water.

D. The public notice and public participation requirements in R18-9-D819 and R18-9-D820 apply to a significant amendment. A minor amendment does not require public notice or public participation.

R18-9-D822. Permit Term; Permit Renewal

A. An AWP permit and demonstration permit are valid for five years from the date the permit is issued pursuant to R18-9-C816.

B. An AWPRA authorized under an AWP permit or demonstration permit shall submit an application for renewal on a form prescribed by the Director with the applicable fee established in A.A.C. Title 18, Chapter 14 at least 180 calendar days before the end of the permit term.

1. If an administratively complete application for renewal of an AWP permit or demonstration permit is not received by the Department prior to the end of the permit term, the AWP permit or demonstration permit expires.
2. If an administratively complete application for renewal of an AWP permit or demonstration permit is received by the Department prior to the end of the permit term, the AWP permit or demonstration permit term extends until a renewal determination is made.

C. The AWPRA shall demonstrate the following requirements to the Department in a renewal application submitted on a form prescribed by the Director:

1. Continued compliance throughout the most recent AWP permit term, or otherwise documentation of data related to any excursion from approved advanced treated water quality parameters,
    a. Excursions shall be monitored at all AWP project components including, but not limited to:
        i. The treatment process at the AWTF,
        ii. The treatment process at the WRF,
        iii. The collection system, and
        iv. Any non-domestic discharger regulated under the enhanced source control program, and
    b. If excursions are detected, the AWPRA shall demonstrate evidence of corrective actions taken in response to the excursion and data confirming that those corrective actions did not impact advanced treated water quality.
2. Facility design documents and as-built construction and configuration reports of all engineered elements of the facility which accurately represent the most current facility, pursuant to R18-9-B810, along with documentation of any compliance challenges with the approved facility design within the most recent AWP permit term,

3. Any proposed modification to an operation, treatment process, treatment configuration, or water quality parameter from the facility design most recently approved under an AWP permit shall result in preparation and submission the applicable, following documents 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 construction plans in subsection (C)(3)(a), including vendor data demonstrating validation information,
    c. A design plan 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 and the requirements of this Article,
    d. A certificate of completion of a final inspection of the AWTF signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department,
    e. A Pilot Study Plan and report prepared pursuant to R18-9-C815,
    f. A list of construction material used pursuant to R18-9-B806, and
4. An updated Operations Plan, prepared pursuant to R18-9-F836, and revised, as necessary, which includes, but is not limited to:
    a. An updated list of operators who are certified by the Department appropriately for all facilities within an AWP project, including any finished water distribution systems, and
    b. Documentation of any periods of operator absence within the most recent AWP permit term, and
5. An updated vulnerability assessment, prepared pursuant to R18-9-F837, along with documentation of any compliance challenges with the vulnerability mitigation approach previously adopted within the most recent AWP permit term,
6. An updated Public Communications Plan, prepared pursuant to R18-9-B811, along with documentation of any changes to the AWPRA's service area during the most recent AWP permit term that affected plan implementation,
7. An updated Enhanced Source Control Plan, prepared pursuant to the program developed in R18-9-E824, with documentation of any changes to the Plan within the most recent AWP permit term,
8. An updated technical, managerial, and financial demonstration, prepared pursuant to R18-9-F833, with documentation of any changes made to the previously approved demonstration in effect during the most recent AWP permit term,
9. Documentation of source water characterization in compliance with the approach under initial source water characterization pursuant to R18-9-C814, as applicable if changes to the sewershed occur which impact the source water characterization report in effect during the most recent AWP permit term,

10. A renewed demonstration of compliance with all minimum design requirements pursuant to R18-9-F832, and

11. An updated Monitoring Plan, prepared pursuant to R18-9-E829, including the proposed pathogen and chemical action levels.

R18-9-D823. Permit Suspension, Revocation, Denial, or Termination

A. The Director may, after notice and opportunity for hearing, suspend or revoke an AWP permit or demonstration permit upon a determination of any of the following:

1. The AWPRA failed to comply with any applicable provision of this Title or any permit condition;
2. The AWPRA misrepresented or omitted a fact, information, or data related to an AWP permit application or permit condition;
3. A permitted activity is causing or will cause a violation of the Safe Drinking Water Act or any requirement of this Article at the entry point to a distribution system for delivery to drinking water consumers;
4. A permitted AWP facility is causing or will cause imminent and substantial endangerment to public health or the environment;
5. The AWPRA failed to maintain the financial capability pursuant to R18-9-F833; or
6. The AWPRA failed to construct a facility within five years of permit issuance.

B. The Director may deny an AWP permit or demonstration permit upon a determination that the AWPRA 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 this Article and all applicable requirements in Chapter 4 and Chapter 5 of this Title. The Director shall base this determination on:
   a. The information submitted in the AWP 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 may terminate an AWP permit or AWP demonstration permit if the AWP project covered under the permit:

1. Is in substantial non-compliance with this Article or the Safe Drinking Water Act such that the continued operation of the facility presents a risk to public health or public safety that cannot be sufficiently abated or addressed through other enforcement mechanisms available to the Department under this Article;
2. Is determined to have provided false information to the Department, or certified false or misleading reports;
3. Is abandoned or no longer actively distributing or producing water under an AWP permit or demonstration permit; or
4. At the permit holder's request upon prior notification to the Department.

PART E. CONSTITUENT CONTROL, MONITORING, AND REPORTING

R18-9-E824. Enhanced Source Control

A. Treated wastewater used to supply an AWP project shall originate from a water reclamation facility that has local authority to implement an enhanced source control program, including authority for oversight, enforcement, and inspection.

B. An AWPRA applicant shall develop, and an AWPRA permittee shall maintain, a locally authorized enhanced source control program which shall:

1. Operate pursuant to specific legal authority enforceable in State or local courts, including the ability to file civil and/or criminal complaints for program violations,
2. Identify, control, or eliminate constituents of concern discharged into the collection systems through the use of constituents of concern control methods including local ordinances and local limits,
3. Include a summary of local limits and other discharge control methods,
4. Include a list of potentially impactful non-domestic dischargers in the service area,
    a. A potentially impactful non-domestic discharger is a source that meets one or more of the following:
        i. The source is subject to the National Pretreatment Program pretreatment standards;
        ii. The source may adversely affect the AWTF operation including pass-through or interference;
        iii. The source has a potential to have serious adverse effects on public health;
        iv. The source has a potential to prevent the AWPRA from achieving requisite treatment standards for any contaminant regulated under this Article;
        v. The source has a potential to cause a violation of a Tier 1 standard; or
        vi. The source has otherwise been designated as potentially impactful by the water reclamation facility.
    b. The potentially impactful non-domestic discharger list shall be:
        i. Utilized to generate a list of impactful non-domestic dischargers, subject to additional control measures, in accordance with subsection (C) of this section,
        ii. Reported to ADEQ every year through the annual report prepared pursuant to R18-9-E831,
        iii. Continuously updated with newly introduced chemicals or new potentially impactful non-domestic dischargers, or as a result of any other event that causes a change within the collection systems impacting the advanced treated water quality,

iv. Verified through open and ongoing communication, as well as routine site visits with the identified potentially impactful non-domestic discharger. Verification may include inquiry into chemical use, potential discharges, and any potential or planned changes in operation that could impact the advanced treated water quality, and

v. Accompanied by collection system investigations to identify sources of Tier 1 or Tier 2 chemical peaks that have a significant impact on advanced treated water quality. These investigations shall occur at all necessary sewer lines, manholes, force mains, lift stations, and other collection system components.

5. Include a map of the collection system components, which shall be submitted to the Department and shall include locations of the potentially impactful non-domestic discharges in the collection system,

6. Include a list of all water reclamation facilities in the collection system that provide treated wastewater to the AWPRA as a source under the AWP program along with a description or map of their respective boundaries,

7. Include activities that protect the water reclamation facility(s) and AWTF(s) from pass-through or interference from constituents of concern which may include, but are not limited to, the creation of additional local limits or addressing routine monitoring activities,

8. Include a pollutant reduction and elimination plan that addresses both non-domestic and domestic dischargers with the goal of mitigating or eliminating constituents of concern prior to entry into the collection system. The plan shall include, at a minimum, the following:

a. A determination of whether targeted outreach is necessary. If necessary, targeted outreach shall include the development of targeted outreach programs for non-domestic dischargers determined to be impactful in accordance with subsection (C)(2) of this section,

b. Education and encouragement of non-domestic dischargers determined to not be impactful in accordance with subsection (C)(2) of this section to participate in pollution prevention programs or environmental stewardship programs that reduce or eliminate the discharge of constituents of concern into the collection system, including the requirement to consider alternatives to constituent of concern usage,

c. A public outreach program for domestic dischargers, and

d. Notification and public hearings on the AWP program and significant program developments,

9. Include a septage hauler control program that tracks and monitors loads and includes a load sampling program which shall retain all load sampling results for a minimum of five years,

10. Implement a program to receive early warning for the purpose of attaining advanced notice of an incoming constituents of concern peak. An early warning system shall include, at a minimum, the following:

a. Online monitoring instrumentation that evaluate data in real time located either in the influent to the water reclamation facility, in the collection system, or at the discharging entity that measures constituents of concern or surrogate parameter(s) and that indicates potential treatment interference, pass-through, or a violation of an AWP action level,

b. A process for notification to the AWPRA of any discharge that can potentially result in the release of contaminants above local limits established pursuant to subsection (B)(3) of this section,

c. Cooperation with local county public health departments, as necessary, to track constituents of concern peaks from disease outbreaks or other impactful health events,

d. A response plan developed pursuant to subsection (B)(12) of this section,

e. A plan for routine calibration of early warning system equipment with the goal of reliable performance,

f. A plan for rapid response and addressing of equipment failure, and

g. Other early warning measures required by the Department, which are necessary to protect the operations of the AWPRA project treatment or prevent contamination of the advanced treated water, based on a review of application components submitted to the Department for review, and on the availability of such measures,

11. Be audited at least every five years by an independent party to assess the effectiveness of the enhanced source control program in controlling the discharge of contaminants,

12. Include a clear and comprehensive response plan to address constituents of concern exceedances. The response plan shall be created in partnership with all relevant AWPRA partners. The plan shall include, at a minimum, the following:

a. A procedure for addressing constituents of concern peaks with the potential to impact advanced treated water quality,

b. An investigation and identification of the exceedance source, or if no source is identified, the initiation of a collection system sampling program,

c. The designation of the leading facility responsible for communication with the AWPRA partners,

d. A procedure for when and how to notify the Department upon a constituent of concern exceedance,

e. A procedure for the bypass and/or shutdown of the AWTF, if necessary,

f. An effective training program ensuring the understanding of the response plan by the responsible personnel,

g. A review of the operation and calibration records for online meters and any relevant analytical methods upon the detection of a constituent of concern exceedance, and

h. Submission of a memorandum of understanding or other contractual agreement between all entities necessary to effectuate the response plan, and

13. Prohibit the discharge of any of the following to the water reclamation facility:

a. Pollutants which create a fire or explosion hazard, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR Part 261.21,

b. Pollutants which will cause corrosive structural damage including discharges with a pH lower than 5.0, unless the treatment works are designed to accommodate such discharges.

c. Solid or viscous pollutants in amounts which will cause obstruction to the flow resulting in interference,

d. Any pollutant, including oxygen demanding pollutants (biochemical oxygen demand, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause Interference,

e. Heat in amounts which will inhibit biological activity resulting in interference including heat in such quantities that the temperature at the water reclamation facility exceeds 40 °C (104 °F), unless the approval authority, upon request of the water reclamation facility, approves alternate temperature limits,

f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through,

g. Pollutants which result in the presence of toxic gas, vapors, or fumes in a quantity that may cause acute worker health and safety problems, and

h. Any trucked or hauled pollutants, except at discharge points designated by the water reclamation facility, and

14. Include local authority for the AWPRA to take the following actions to determine compliance of a potentially impactful non-domestic discharger with a local ordinance:

a. Receive and analyze all self-monitoring reports and notices submitted by potentially impactful non-domestic dischargers,

b. Randomly sample and analyze effluent from potentially impactful non-domestic dischargers and conduct surveillance and inspection activities needed to identify, independent of any information supplied by such users, occasional or continuing noncompliance with any local limit or requirement, and

c. Investigate instances of noncompliance with any enhanced source control ordinance when notice of any actual or probable noncompliance has been received by the AWPRA, and

15. Report all program elements in this subsection to the Department annually, pursuant to R18-9-E831, and

16. Include any other relevant information required by the Department.

C. Impactful Non-Domestic Dischargers List.

1. From the potentially impactful non-domestic dischargers list developed in subsection (B)(4) of this section, the AWPRA applicant shall develop a list of impactful non-domestic dischargers by conducting a significant impact analysis for each potentially impactful non-domestic discharger that considers, but is not limited to, the following factors:

a. Average wastewater discharged into the collection system,

b. Dilution of discharge within the collection system,

c. The nature of the discharge and its constituents,

d. The ability of downstream treatment processes to address the discharge, and

e. The effect the discharge will have on treatment processes and advanced treated water.

2. The AWPRA permittee shall subject the identified impactful non-domestic dischargers in the collection system to additional control measures including, but not limited to:

a. Locally established discharge limits,

b. Locally established monitoring, and

c. Targeted outreach.

3. The list shall be reported to ADEQ every year through the annual report prepared pursuant to R18-9-E831.

D. In addition to the requirements of this section, an enhanced source control program shall be developed, conducted, and maintained using good engineering practices. Methods for developing, conducting, and maintaining an enhanced source control program shall be approved if the AWPRA applicant can demonstrate that the methods are sufficiently detailed and robust for the purpose of enhanced source control, pursuant to this Article.

1. ADEQ shall develop and make available guidance on developing, conducting, and maintaining an enhanced source control program.

2. An enhanced source control program developed, conducted, and maintained in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

E. An AWPRA shall form and maintain a source control committee that includes representatives from:

1. Each AWPRA partner that is part of the AWPRA's enhanced source control program, including each AWPRA partner that supplies treated wastewater to the AWP project or that owns and/or operates a water reclamation facility that provides treatment, and

2. Key non-domestic dischargers and others that discharge to the collection system chemicals that may pose a risk to public health.

R18-9-E825. Tier 1 Chemical Control; Maximum Contaminant Levels

For the purposes of this Article, Tier 1 chemicals are the chemical contaminants that have "Primary Drinking Water Standards" under 40 CFR Part 141 as incorporated by reference in R18-4-102, including those with Safe Drinking Water Act-required Maximum Contaminant Levels or Treatment Techniques.

R18-9-E826. Tier 2 Chemical Control; Advanced Water Purification-Specific Chemicals

A. An AWPRA shall conduct a Tier 2 analysis under this section in order to determine Tier 2 chemicals, propose alert and action levels for Tier 2 chemicals at the AWTF, and to identify the chemical controls necessary to be implemented by the AWPRA in the following manner:

1. An AWPRA applicant shall conduct the analysis as a required technical component of their permit application for an AWP permit or an AWP demonstration permit, pursuant to R18-9-C816 and R18-9-C817, respectively.
2. Once permitted, an AWPRA shall conduct a new Tier 2 analysis under this section:
   a. If the AWPRA is aware of, becomes aware of, or should reasonably be aware of:
      i. The identification of additional potentially impactful non-domestic dischargers pursuant to R18-9-E824(B)(4); or
      ii. Significant volumetric adjustments to an AWPRA water reclamation facility's total daily volume of treated wastewater that are likely to impact the expected concentration of any chemical pursuant to subsection (D) of this section; or
   b. If changes to any component of the permitted AWP project occur that will result in an exceedance of an action level; or
   c. At a minimum, every five years as a component of a permit renewal application pursuant to R18-9-D822.

B. Non-Domestic Dischargers List. The AWPRA applicant shall list all non-domestic dischargers in the collection system that are a direct or indirect source to an AWPRA water reclamation facility.

C. Chemical Inventory List. The AWPRA applicant shall generate a list of chemicals that are used, stored, or discharged by all non-domestic dischargers in the list from subsection (B) above. The AWPRA applicant shall add chemicals used at the water reclamation facility and the AWTF to the chemical inventory list.

D. Tier 2 Analysis. The AWPRA applicant shall conduct the following analysis for each chemical identified in the Chemical Inventory List in subsection (C) above:

1. Calculate the projected daily load for each chemical in the inventory list generated in subsection (C) for each non-domestic discharger in the list generated in subsection (B) as follows: Mass loading of contaminant (lb/day) = Flow (MGD) x Maximum Concentration (mg/L) x 8.34 (for unit conversion);
2. Calculate the projected total daily load of each chemical in the inventory list generated in subsection (C) for all non-domestic dischargers in the list generated in subsection (B), cumulatively, as follows: Total Contaminant Load (lb/day) = ∑ Mass loading (lb/day) for all dischargers;

3. Calculate the projected daily concentration of each chemical in the chemical inventory list in the treated wastewater by comparing the collection system's projected total daily load from subsection (D)(2) for each chemical in the chemical inventory list against the total influent flow of treated wastewater at the headworks of the proposed AWTF using the following formula:

$$Expected\ concentration\ (mg/L) = \frac{Total\ Contaminant\ Load\ (\frac{lb}{day})}{Total\ Influent\ Flow\ (MGD) \times 8.34}$$

4. For chemicals with one or more of the corresponding health advisory values in subsections (a)(i) through (v) below established in the "2018 Edition of the Drinking Water Standards and Health Advisories Tables":
   a. Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the lowest health advisory value, from the following available values:
      i. One-day (mg/L)
      ii. Ten-day (mg/L)
      iii. DWEL (mg/L)
      iv. Life-time (mg/L)
      v. mg/L at 10^{-4} Cancer Risk.
   b. If the projected daily concentration exceeds the health advisory value, the chemical shall be a Tier 2 chemical.
5. For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above but do have a drinking water health advisory notification level or equivalent from a state drinking water program that was developed using a method that ADEQ approves and lists under subsection (a), below:
   a. Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the following corresponding state drinking water health advisory notification level or equivalent:
      i. Trimethylbenzene (1,2,4-) (CAS No. 95-63-6): 0.33 mg/L,
      ii. *Reserved*.
   b. If the projected daily concentration exceeds the health advisory notification level, the chemical shall be a Tier 2 chemical.
6. For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above, nor a notification level in another state's drinking water program pursuant to subsection (D)(5) above:
   a. Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the corresponding Departmental health advisory value listed below:
      i. Benz[a]anthracene (CAS No. 56-55-3): 0.06 mg/L
      ii. Benzo[b]fluoranthene (CAS No. 205-99-2): 0.06 mg/L

iii. Benzo[g,h,i]perylene (CAS No. 191-24-2): 0.00001 mg/L

iv. Benzo[k]fluoranthene (CAS No. 205-99-2): 0.005 mg/L

v. Chrysene (CAS No. 218-01-9): 6 mg/L

vi. Dimethyl phthalate (CAS No. 131-11-3): 0.001 mg/L

vii. Indeno[1,2,3,-c,d]pyrene (CAS No. 193-39-5): 0.06 mg/L

viii. Phenanthrene (CAS No. 85-01-8): 0.0002 mg/L.

b. If the projected daily concentration exceeds the Departmental health advisory value, the chemical shall be a Tier 2 chemical for ongoing monitoring purposes pursuant to R18-9-E829, but shall be exempt from all compliance requirements under R18-9-E829(D) and the Projected Chemical Treatment List in subsection (F) below.

7. For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above, nor a notification level in another state's drinking water program pursuant to subsection (D)(5) above, nor a Departmental health advisory value pursuant to subsection (D)(6) above, but do have a Reference Dose (RfD) or Cancer Slope Factor (CSF) in credible peer-reviewed literature or state or Federal databases:

a. Consult with the Department and/or the Project Advisory Committee to determine a health advisory value.

b. Compare the projected daily concentration of each applicable chemical calculated in subsection (D)(3) with the corresponding health advisory determined in subsection (D)(7)(a) above.

c. If the projected daily concentration exceeds the health advisory determined in subsection (D)(7)(a), the chemical shall be a Tier 2 chemical.

8. For chemicals that do not have an established health advisory pursuant to subsection (D)(4) above, nor a notification level in another state's drinking water program pursuant to subsection (D)(5) above, nor a Departmental health advisory value pursuant to subsection (D)(6) above, nor a health advisory determined pursuant to subsection (D)(7) above:

a. An AWPRA applicant shall consult with the Department and/or the Project Advisory Committee to determine the health risk of the chemical through reasonably appropriate bioanalytical studies and/or bioassays.

b. If the health risk in subsection (D)(8)(a) above is determined to be significant, the chemical shall be a Tier 2 chemical.

c. If the bioanalytical studies and/or bioassays conducted in subsection (D)(8)(a) above are indeterminate, the chemical shall be removed through measures adopted by the AWPRA in its enhanced source control program pursuant to R18-9-E824.

9. Action and Alert Levels. An AWPRA applicant shall calculate and submit to the Department an action level and an alert level for each Tier 2 chemical.

a. The action level for the Tier 2 chemicals established under subsection (D)(4) shall be set at the same value as the lowest applicable health advisory value in the "2018 Edition of the Drinking Water Standards and Health Advisories Tables", below:

i. One-day (mg/L)

ii. Ten-day (mg/L)

iii. DWEL (mg/L)

iv. Life-time (mg/L)

v. mg/L at 10-4 Cancer Risk.

b. The action level for the Tier 2 chemicals established under subsection (D)(5) shall be set at the same value as the corresponding health advisory notification level in subsection (D)(5)(a).

c. The action level for the Tier 2 chemicals established under subsection (D)(7) shall be set at the same value as the corresponding health advisory determined in subsection (D)(7)(a).

d. The action level for the Tier 2 chemicals established under subsection (D)(8) shall be set at a value that is reasonably protective of human health, reasonably utilizing the results of the bioanalytical studies or bioassays.

e. The alert level shall be set reasonably below the action level.

E. Pass-Through or Interference Chemical List. The AWPRA applicant shall analyze the chemical inventory list in subsection (C) in order to identify chemicals that are known to or expected to pass-through or interfere with AWTF treatment processes. The AWPRA applicant shall generate a list to be used in subsection (F).

F. Projected Chemical Treatment List. Based on the Tier 1 MCLs, the Tier 2 chemicals identified in subsection (D)(4), (5), (7) and (8), and the pass-through or interference chemical list generated in subsection (E), the AWPRA applicant shall select an optimized pilot and full-scale AWTF treatment train and compile a list of chemicals that are projected to be treated by the selected treatment train.

1. During the pilot study, pursuant to R18-9-C815, the AWPRA applicant shall demonstrate chemical control of all chemicals on the Projected Chemical Treatment List through treatment at the pilot treatment train.

2. All chemicals that are not able to be controlled through treatment at the pilot or full-scale AWTF shall be controlled through measures adopted by the AWPRA in its enhanced source control program pursuant to R18-9-E824. The selected control measures shall be submitted to the Department along with the Enhanced Source Control Plan pursuant to R18-9-C816 and R18-9-C817.

G. An AWPRA shall maintain the lists of chemicals identified under subsections (C) and (E) and, if a new Tier 2 analysis conducted under subsection (D) results in a modification to any component of the AWP project, the AWPRA shall request an amendment to their AWP permit pursuant to R18-9-D821.

R18-9-E827. Tier 3 Chemical Control; Performance-Based Indicators

A. An AWPRA applicant shall identify Tier 3 chemicals for the purpose of monitoring the efficacy of reduction by a treatment component at the pilot and full-scale treatment trains or to provide an indication of a process's failure.

B. Tier 3 chemicals are composed of performance-based indicators which the AWPRA applicant shall select based on the requirements of this section.

1. The AWPRA applicant shall monitor each performance-based indicator and demonstrate chemical removal for all selected treatment components in the treatment train.
2. Performance based indicators may be grouped under a surrogate such that the AWPRA applicant may monitor removal of that surrogate in place of performance-based indicators if the following requirements are met:
    a. All performance-based indicators in the group share similar properties such that removal of the surrogate is adequately representative of every performance-based indicator in that group, and
    b. The AWPRA applicant demonstrates that the surrogate is directly correlated to the concentration of a performance-based indicator.

C. Performance based indicators. Each performance-based indicator shall be selected from pre-existing chemicals identified in the treated wastewater either through the Initial Source Water Characterization report pursuant to R18-9-C814(E) or shall otherwise be introduced by the AWPRA applicant.

1. Pre-Existing. Performance based indicators selected from pre-existing chemicals identified in the treated wastewater shall be selected in accordance with, but not limited to, the following criteria:
    a. Concentration. To demonstrate adequate percentage of removal, a performance-based indicator shall have a median concentration at least five times greater than its method reporting limit, measured as the detection ratio.
    b. Prevalence. To adequately reflect treatment efficacy, the performance-based indicator shall have a consistent detection frequency of greater than 80% in the treated wastewater.
    c. Measurability. Measurements demonstrating concentration and prevalence pursuant to subsections (C)(1)(a) and (b) of this section shall be made in accordance with established and appropriate analytical methods that are sufficiently precise and sensitive.

d. Specificity. The performance-based indicator shall be removable by the targeted treatment process(es) it is intended to monitor and shall meet the prevalence and concentration criteria at the influent of the targeted treatment process pursuant to subsections (C)(1)(a) and (b) of this section.

e. Sensitivity. The performance-based indicator shall be sufficiently sensitive such that the targeted treatment process achieves at least 75% removal when functioning as designed.

f. Diversity. For all performance-based indicators selected from pre-existing chemicals, the AWPRA applicant shall demonstrate the following:

i. Each chemical treatment process is monitored by at least one performance-based indicator, and

ii. The treatment train as a whole is monitored by at least one performance-based indicator which is partially removed by each treatment process, but only removed to at least 75% if all treatment processes are functioning as intended.

2. Introduced. If no pre-existing chemicals are relevant as a performance-based indicator for a specific treatment process, the AWPRA applicant shall introduce a performance-based indicator for the purpose of testing the selected treatment process for requisite chemical removal in compliance with this section. For each introduced performance-based indicator an AWPRA applicant shall:

a. Reasonably demonstrate the selected treatment process performance, and

b. Include an established procedure for introduction into the treatment train.

D. Critical Control Points. For each performance-based indicator, the AWPRA applicant shall designate critical control points where monitoring will occur in the pilot treatment train to indicate individual process performance. The AWPRA applicant may propose critical control points at only the treatment train influent and effluent points if all performance-based indicators are demonstrated to be sufficiently recalcitrant to upstream and downstream processes.

E. An AWPRA applicant shall include an initial Tier 3 chemical list along with proposed critical control points as a component of the Pilot Study Plan prepared pursuant to R18-9-C815.

F. In addition to the requirements of this section, the Tier 3 chemical list compilation and monitoring shall be conducted using good engineering practices. Other methods for generating, designing, and conducting Tier 3 chemicals and monitoring shall be approved if the AWPRA applicant can demonstrate that the alternative methods are sufficiently detailed and robust for the purpose of monitoring the efficacy of reduction by a treatment process at the pilot or full-scale treatment train, or providing an indication of process failure.

1. ADEQ shall develop and make available guidance on Tier 3 chemical list compilation and monitoring.

2. A Tier 3 chemical list compiled and monitored in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

R18-9-E828. Pathogen Control

A. The AWP project shall be designed and constructed to achieve pathogen reduction by following the prescribed methods to determine log reduction values for enteric viruses, Giardia lamblia cysts, and Cryptosporidium oocysts, also referred to collectively as reference pathogens, as outlined in either subsection (B) or (C) of this section.

B. Standard Log Reduction. An AWPRA applicant choosing the standard log reduction approach shall design the AWP project to achieve the following cumulative validated treatment values from raw wastewater to finished water:

1. 13 log reduction for enteric viruses,
2. 10 log reduction for Giardia lamblia cysts, and
3. 10 log reduction for Cryptosporidium oocysts.

C. Site-Specific Log Reduction. An AWPRA applicant choosing a site-specific log reduction approach shall design the AWP project based on cumulative validated treatment values determined through reference pathogen monitoring pursuant to R18-9-C814(C)(3)(c) and the following:

1. Site-specific pathogen monitoring for the reference pathogens shall be conducted over a period of at least 24 months and shall include, at a minimum:
   a. One month of initial composite sampling consistent with the following requirements:
      i. One sample taken daily, and
      ii. The samples obtained in subsection (C)(1)(a)(i) shall be used, at the end of the first month, to identify the day of the week that yields the highest pathogen density.
   b. At least 23 months of pathogen monitoring consistent with the following requirements:
      i. One sample taken per month at the same day of the week throughout the sampling period as established in subsection (C)(1)(a), and
      ii. The sample obtained in subsection (C)(1)(b)(i) shall be taken consistently during the same week each month.
2. Any missed sample collected under subsections (C)(1)(a) or (b) of this section shall result in an extension of the sampling period by another week or month as appropriate pursuant to R18-9-A802(C), and cannot be replaced with a sample from a different day,
3. Sampling shall occur at a location in the water reclamation facility treatment train before the first disinfection treatment process and before treated wastewater transference to the AWTF,
4. Sample results below method reporting limit shall be reported at the method reporting limit of the analytical instrument for characterization calculations and be flagged as such,

5. Non-detects from laboratory analysis must be demonstrated with a large sample volume analysis,

6. An AWPRA applicant shall have a cumulative validated treatment of not less than 8 log for enteric viruses, 6 log for Giardia lamblia cysts, and 5.5 log for Cryptosporidium oocysts even if non-detects are demonstrated by the sampling program,

7. The highest sample concentration for each reference pathogen shall be used to calculate the required log removal targets,

8. Norovirus shall be used as the representative enteric virus for baseline virus enumeration.

   a. The AWPRA applicant shall utilize either qPCR or culture methods for analysis,

   b. All corresponding recovery-corrected data shall be documented for review, and

   c. The results shall be documented for review with accompanying quality assurance and quality control, and

9. Laboratory analysis of samples collected pursuant to this section shall follow EPA qPCR or Culture Methods 1623.1, "Cryptosporidium and Giardia in Water by Filtration/IMS/FA" and 1615 "Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR" for Giardia lamblia cysts, Cryptosporidium oocysts and Norovirus. In addition, laboratories using these methods are required to follow general requirements and recommendations for quality assurance and quality control procedures in Section 9020, "Quality Assurance/Quality Control" of the Standard Methods For The Examination of Water and Wastewater, 24th Edition.

D. Critical Control Points. For each reference pathogen, the AWPRA applicant shall designate critical control points where monitoring will occur in the pilot plant and the full-scale plant in order to assess individual process performance.

1. Critical control point designation shall be accompanied by a comprehensive plan for monitoring and reporting, including, but not limited to, the following elements:

   a. Type of monitoring (i.e. online monitoring, continuous monitoring, grab samples, etc.),

   b. Frequency of monitoring (i.e. 15-minute, hourly, daily, weekly, etc.),

   c. Instantaneous flow rate and flow totalizing capability for the purpose of calculating residence times and responses,

   d. Demonstrated operational parameters confirming the treatment barriers are intact such as to ensure the process is meeting the water quality parameters and pathogen removal goals, and

   e. A list of the identified action levels and alert limits, accompanied by the corresponding responses for all critical control points, pursuant to R18-9-F836.

2. Critical control point monitoring shall occur at all validated treatment process locations.

3. The AWPRA applicant shall document the critical control point methods and the following elements as components of the Operations Plan prepared pursuant to R18-9-F836:

   a. All delay times from the pathogen sampling time, instrument analysis time, operator response time, as well as anticipated time to respond to a failure, and

b. Automated shutdown procedures based on pathogen critical control point failure, along with a description of shutdown sequences, procedures, and timing.

E. In addition to the requirements of this section, the pathogen monitoring shall be designed and conducted using good engineering practices. Methods for designing and conducting pathogen monitoring shall be approved if the AWPRA applicant can demonstrate they are sufficiently detailed and robust for the purpose of characterizing pathogens in a treated wastewater source.

1. ADEQ shall develop and make available guidance on designing and conducting pathogen monitoring.
2. Pathogen monitoring designed and conducted in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

R18-9-E829. Ongoing Monitoring Requirements

A. The AWPRA shall perform ongoing monitoring in compliance with the requirements of this section, and shall:

1. Assure compliance with both pathogen control log reduction targets and chemical control limits for Tier 1, Tier 2, and Tier 3 at the AWTF treated wastewater influent and the advanced treated water effluent,
2. Assure continued process performance at critical control points,
3. Perform sampling on the advanced treated water prior to delivery pursuant to this section, and
4. Perform additional sampling as necessary on the finished water prior to distribution pursuant to the requirements of the Safe Drinking Water Act.

B. Pathogen Control Monitoring. An AWPRA shall monitor in a manner proposed by the AWPRA and approved by the Director pursuant to R18-9-E828(D).

C. Tier 1 Chemical Control Monitoring.

1. The AWPRA shall monitor for all Tier 1 chemicals at a quarterly interval, except for Nitrite and Nitrate as Nitrogen and TOC, which shall be monitored pursuant to subsection (F) and R18-9-F834, respectively.
2. The AWPRA shall conduct Tier 1 monitoring at two locations relative to the AWTF:
   a. The treated wastewater, and
   b. The advanced treated water.
3. Violations of Tier 1 chemicals, except for TOC and Nitrogen, are the corresponding Safe Drinking Water Act-MCL values in the advanced treated water.
4. Nothing in this section exempts the AWPRA from applicable Safe Drinking Water Act monitoring requirements.

D. Tier 2 Chemical Control Monitoring.

1. The AWPRA shall monitor for all Tier 2 chemicals monthly.

2. The AWPRA shall conduct Tier 2 monitoring at two locations relative to the AWTF:
    a. The treated wastewater, and
    b. The advanced treated water.
3. Compliance monitoring for Tier 2 chemicals occurs at the advanced treated water.
4. If a monitoring result for a Tier 2 chemical indicates an exceedance of an action level, the AWPRA shall collect a confirmation sample within 24 hours of the exceedance.
5. A Tier 2 action level is violated when the average of the initial sample and the confirmation sample exceeds the action level. Upon a violation, an AWPRA shall notify the Department and conduct any required response procedures pursuant to reporting under R18-9-E830, the Operations Plan under R18-9-F836 and subsections (D)(6) - (D)(9) of this section.
6. Basic Response Procedure. Upon a violation as described in subsection (D)(5), and with the goal of reducing the concentration of the exceeded chemical to a level below the action level, the AWPRA shall:
    a. Increase the monitoring frequency of the chemical to weekly, and
    b. Initiate an investigation of the source of the chemical, the cause of the elevated result, and the efficacy of the treatment process(es).
7. An AWPRA shall conduct the corresponding advanced response procedure in subsection (D)(8) of this section if either of the following two results occur:
    a. A Tier 2 chemical with a non-cancer toxicological endpoint has a violation value of 10 times the action level; or
    b. A Tier 2 chemical considered to pose a cancer risk (corresponding to a lifetime cancer risk of $1x10^{-4}$) has a violation value of 100 times the action level.
8. Advanced Response Procedure.
    a. Under subsection (D)(7)(a) of this section, an AWPRA shall:
        i. Notify ADEQ within 24 hours of the notification of the result, and
        ii. Report the detection in the applicable public water system's annual consumer confidence report.
    b. Under subsection (D)(7)(b) of this section, an AWPRA shall:
        i. Cease delivery of advanced treated water immediately,
        ii. Notify ADEQ within 24 hours of the notification of the result,
        iii. Provide public notification if advanced treated water with those exceedances was distributed (if diverted, public notice is not required),
        iv. Report the result in the applicable public water system's annual consumer confidence report,

v. Upon returning the advanced treated water to distribution, utilize treatment or blending to meet the chemical's action level, and

vi. Propose corrective actions, such as rectifying changes to the treatment and operations of the AWTF, or installing new control measures for the treated wastewater source.

9. Reduced Monitoring Frequency Criteria. ADEQ may allow a decrease in the Tier 2 sampling frequency from monthly to quarterly, based on a review of the most recent two years of monthly analytical results showing that a chemical has not been detected.

a. The monitoring frequency may be decreased from quarterly to annually following ADEQ approval, based on a review of the most recent three years of quarterly analytical results showing the chemical has not been detected.

b. The monitoring frequency may be reverted to prior intervals at the Department's discretion.

E. Tier 3 Chemical Control Monitoring. The AWPRA shall monitor for all Tier 3 chemicals at the designated critical control points in the manner and timeframes proposed by AWPRA and approved by the Director pursuant to R18-9-E827 and R18-9-F836.

F. Ammonia and Nitrite and Nitrate as Nitrogen.

1. The AWPRA shall monitor for Ammonia and Nitrite and Nitrate as Nitrogen using continuous online analyzers.

2. The AWPRA shall conduct Ammonia, Nitrite and Nitrate monitoring at two locations relative to the AWTF:

a. The treated wastewater influent, and

b. The advanced treated water effluent.

3. The AWPRA shall demonstrate that all Ammonia has been removed at the advanced treated water effluent.

4. The AWPRA shall operate the facility in such a manner that:

a. Nitrite measured as nitrogen does not exceed 1 mg/L at the advanced treated water location daily on an absolute basis, and

b. Nitrate measured as nitrogen does not exceed 10 mg/L at the advanced treated water location daily on an absolute basis.

5. Any exceedance of 1 mg/L of nitrite and 10 mg/L of nitrate on an absolute basis, measured as Nitrogen daily, requires a public notification pursuant to A.A.C. R18-4-119.

G. Total Organic Carbon Monitoring. The AWPRA shall follow all TOC monitoring requirements established pursuant to R18-9-F834.

H. Water Reclamation Facility Operational Parameters.

1. The AWPRA applicant shall provide a list of water reclamation facility operational parameters and ranges that produced the AWTF treated wastewater influent water quality as components of:

a. The Pilot Study Plan pursuant to R18-9-C815, and

b. The AWP permit application pursuant to R18-9-C816.

2. At the water reclamation facility, the AWPRA shall monitor for the parameters identified in subsection (F) of this section and process control parameters.

3. Any significant change in the operational parameters or their ranges must be approved through a permit amendment pursuant to R18-9-D821. For the purposes of this subsection, "significant change" means any operational change that will result in a change to the treated wastewater.

I. In addition to the requirements of this section, ongoing monitoring shall be developed, proposed and conducted using best practices, proper sampling procedures, and reliable equipment. Similar monitoring program components shall be approved if the AWPRA can demonstrate that the method is sufficiently detailed and robust for the purpose of AWP ongoing monitoring pursuant to this Article.

1. ADEQ shall develop and make available guidance on AWP ongoing monitoring.

2. AWP ongoing monitoring conducted in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using best practices.

R18-9-E830. Reporting Requirements

A. An AWPRA shall conduct reporting pursuant to the applicable general reporting requirements throughout this Article and the specific reporting requirements in this section. The AWPRA shall submit reports to the Department, on a form prescribed by the Director and pursuant to relevant specifications in the permit, through an AWP online portal on the Department's website.

B. Pathogen Reporting.

1. An AWPRA shall report ongoing pathogen monitoring results monthly.

2. An ongoing pathogen monitoring report shall include, but is not limited to, the following:

a. A summary of the overall treatment train pathogen log reduction value performance,

b. A summary of the individual treatment process performance monitoring data,

c. The date, duration, and cause of each occurrence of log reduction value performance below the selected reference pathogen approach log reduction values in either R18-9-E828(B) or (C),

d. A summary of excursions of operational parameters outside the Department approved operating envelope,

e. Submission of calibration records for instruments that monitor pathogen critical control points quarterly,

f. Dates and descriptions of major equipment and process failures and corrective actions, along with data confirming that the corrective actions did not impact the approved product water quality,

g. A summary of any water quality complaints and reports of gastrointestinal illness received from customers,

h. A summary of activities of the wastewater source control program to control pathogens, and

i. Investigation or incident reports regarding cross-connection.

3. An AWPRA shall report other applicable pathogen monitoring requirements in the time and manner set forth in the AWP permit and R18-9-E828.

C. Tier 1 Reporting.

1. An AWPRA shall report ongoing Tier 1 chemical monitoring results quarterly.
2. An ongoing Tier 1 Chemical report shall include, but is not limited to, the following:
   a. A summary of the overall treatment train chemical control performance,
   b. A summary of chemicals detected as a result of monitoring conducted pursuant to R18-9-E829,
   c. Investigation or incident reports regarding cross-connection,
   d. A summary of activities of the wastewater source control program to control chemicals,
   e. Dates and descriptions of any major equipment and process failures and corrective actions, along with data confirming that the corrective actions did not impact the approved product water quality, and
   f. A summary of individual treatment process performance monitoring data.
3. An AWPRA shall report other applicable Tier 1 chemical monitoring requirements in the time and manner set forth in the AWP permit and R18-9-E829.
4. Nothing in this section exempts the AWPRA from applicable Safe Drinking Water Act reporting requirements.

D. Tier 2 Reporting.

1. An AWPRA shall report Tier 2 chemical monitoring results monthly.
2. An ongoing Tier 2 chemical report shall include, but is not limited to, the following:
   a. A summary of overall treatment train chemical control performance,
   b. A summary of chemicals detected as a result of monitoring conducted pursuant to R18-9-E829,
   c. Investigation or incident reports regarding cross-connection,
   d. A summary of enhanced source control activities,
   e. Dates and descriptions of major equipment and process failures and corrective actions, along with data confirming that the corrective actions did not impact the approved product water quality, and
   f. A summary of individual treatment process performance monitoring data.
3. An AWPRA shall report other applicable Tier 2 chemical monitoring requirements in the time and manner set forth in the AWP permit and R18-9-E826.

E. Tier 3 Reporting. An AWPRA shall report Tier 3 chemical monitoring results in the time and manner set forth in the AWP permit and R18-9-E827.

F. Ammonia and Nitrite and Nitrate as Nitrogen Reporting.

1. An AWPRA shall report Ammonia and Nitrite and Nitrate as Nitrogen chemical monitoring results quarterly.
2. An ongoing Ammonia and Nitrite and Nitrate as Nitrogen report shall include, but is not limited to, the following:
    a. A summary of overall treatment train nitrogen species control performance,
    b. A summary of nitrogen species detected as a result of monitoring conducted pursuant to R18-9-E829,
    c. Investigation or incident reports regarding cross-connection,
    d. Dates and descriptions of major equipment and process failures and corrective actions, along with data confirming that the corrective actions did not impact the approved product water quality, and
    e. A summary of individual treatment process performance monitoring data.

G. TOC Reporting. An AWPRA shall report TOC monitoring results quarterly in accordance with the selected TOC management approach pursuant to R18-9-F834.

H. Water Reclamation Facility Operational Parameters Reporting. An AWPRA shall report the water reclamation facility operational parameter monitoring results monthly pursuant to R18-9-F832.

R18-9-E831. Annual Report

A. An AWPRA shall submit an annual report to the Department, postmarked no later than March 30th.

B. The report shall include the following information from the previous calendar year:

1. A summary of the compliance status of the AWP permit and/or demonstration permit including:
    a. A list of violation(s),
    b. Any off-spec water diversions, shutdowns, or corrective action(s) taken along with data confirming that the corrective actions did not impact the approved product water quality,
    c. Required sampling and monitoring activities at critical control points, and
    d. All other related AWP permit or regulation compliance items.
2. Any expected change(s) in quantity and quality of the treated wastewater,
3. A summary of any operational or technical challenges in meeting advanced treated water quality standards,
4. Any expected treatment changes and the impact on subsequent unit processes in the treatment train and the advanced treated water,
5. A verification of all required maintenance performed at each critical control point and any other process equipment, including evidence of instrumentation calibration,
6. Enhanced source control components, pursuant to R18-9-E824, including:
    a. A summary of all sampling activities conducted at the AWPRA facilities,

b. A summary of any event resulting in upset, interference, or pass-through at any AWPRA facility,

c. A report documenting a review of established local limits along with any subsequent updates or changes by the AWPRA,

d. An update of the potentially impactful non-domestic discharger list and the impactful non-domestic discharger lists,

e. A description of any challenges under the enhanced source control program, and any proposed program changes,

f. A list of impactful non-domestic dischargers in non-compliance and any corrective actions taken, along with data confirming that the corrective actions did not impact the approved product water quality,

g. All outreach activities conducted,

h. All completed staff training related to enhanced source control, the National Pretreatment Program, or operation or maintenance of an AWPRA facility,

i. A list of any corrective or enforcement actions taken by the AWPRA against an AWPRA partner, and

j. A list of events identified through the early warning system and the actions taken to mitigate those events, and

7. The AWTF's TOC management annual approach. This includes, if applicable, the results of the annual site-specific TOC approach, including the lower value of the two site-specific procedures, and the reestablished alert and action levels pursuant to R18-9-F834, and

8. Any other information necessary to assist the Department in assessing challenges to program implementation.

PART F. TECHNICAL AND OPERATIONAL REQUIREMENTS

R18-9-F832. Minimum Design Requirements

A. An AWPRA shall meet the minimum design criteria in this section in designing and constructing a pilot treatment train and a full-scale treatment train under an AWP project.

B. Pathogen Control.

1. Under an AWP project, treated wastewater shall receive continuous pathogen treatment prior to delivery or distribution.

2. Pathogen log reduction credits will only be assigned for treatment barriers.

3. A treatment train shall contain at least one validated filtration treatment process and one validated disinfection treatment process targeting each of the three reference pathogens.

4. Each treatment process shall be credited with a minimum validated pathogen log reduction of 0.5 log reduction value.

5. Each treatment process shall not be credited with more than 6 validated pathogen log reduction credits.

6. Each treatment process may receive pathogen log reduction credits for one or more pathogens.

7. The treatment train, cumulatively, shall meet or exceed either the standard or site-specific log reduction targets for each reference pathogen pursuant to R18-9-E828.
8. An AWPRA shall maintain a pathogen monitoring strategy, which includes approved performance monitoring for surrogates, in order to receive log reduction values for a treatment process.
9. Each treatment process used to meet the requirements in this section shall have the pathogen log reduction values validated for each reference pathogen.
    a. An AWPRA may use a validation study or a previously-approved validation study report, in accordance with the protocol elements in subsection (B)(10) of this section.
    b. A validation study protocol shall be prepared by a licensed Arizona engineer with experience in drinking water or wastewater treatment, specifically in evaluating pathogen control in public water supplies.
10. The validation study protocol shall:
    a. Identify the treatment mechanism(s) of pathogen reduction by each treatment process,
    b. Identify the pathogen(s) being addressed by the treatment process, or appropriate surrogate(s) for the pathogen(s), that are used in the validation study, which shall be the one(s) most resistant to the treatment mechanism(s),
    c. Ensure that the pathogen(s) or surrogate(s) for the pathogen(s) are present in the test water in concentrations sufficient to demonstrate a pathogen log reduction,
    d. Identify the factors that influence the pathogen reduction efficiency for the treatment mechanism(s) and includes at least:
        i. Feed water characteristics such as temperature and pH,
        ii. Hydraulic loading,
        iii. Deterioration of components, and
        iv. Integrity failure, and
    e. Identify the surrogate and/or operational parameters that can be measured continuously and that will correlate with the reduction of the pathogen(s) or surrogate(s) for the pathogen(s),
    f. Identify the validation methodology to demonstrate the pathogen log removal capability of the treatment process, which shall involve a challenge test to quantify the reduction of the target pathogen or appropriate surrogate while concurrently monitoring the operational parameters to determine an operating envelope,
    g. Describe the method to collect and analyze data to formulate evidence-based conclusions,
    h. Describe the method to determine the alert and action levels and the operational monitoring and control strategy,

i. Describe the method to be used to calculate the log reduction value for the treatment process for each pathogen such that the validated log reduction value shall not exceed that achieved by 95 percent of the challenge test results when the treatment process is operating in compliance with the alert and action levels, and

j. Identify the circumstances that would require a re-validation or additional on-site validation.

11. The treatment train shall be continuously operated to achieve the log reduction value targets using validated treatment log reduction values and must conform to the Operations Plan pursuant to R18-9-F836.

12. The treatment train shall include UV disinfection with a dose of at least 300 mJ per cm2.

13. The SCADA system shall identify process failure to meet the alert and action levels and shall automatically discontinue the delivery of water to any distribution system if the treatment train does not meet the minimum design log reduction value target.

14. Treatment processes that are credited with pathogen log reductions must be continuously tracked with a SCADA system utilizing online monitoring for surrogates and/or operational parameters.

15. The treatment train shall be operated continuously in accordance with the Operations Plan pursuant to R18-9-F836 to achieve either the standard or site-specific pathogen reduction approaches pursuant to R18-9-E828.

16. Blending is not eligible to receive pathogen log reduction credit, nor validated treatment log reduction values.

C. Chemical Control.

1. Under an AWP project, treated wastewater shall receive continuous chemical treatment prior to delivery or distribution.

2. All treatment trains shall have at least three diverse and separate treatment processes, including, but not limited to:

a. An AOP that meets the requirements set forth in subsection (D)(4) of this section, and

b. A physical separation process.

3. Ozone/BAC processes shall be designed to provide no less than 1.0 log reduction of each of the following indicators: formaldehyde, acetone, carbamazepine, and sulfamethoxazole.

a. The ozonation process shall be designed to provide a ratio of the applied ozone dose to the design feed water TOC concentration greater than 1.0. Alternative design ratios may be used if reduction of 1.0 log for the indicators carbamazepine, and sulfamethoxazole is demonstrated during the pilot as part of the design of the ozonation process.

b. BAC shall be designed with an empty bed contact time of at least 15 minutes. Alternative times may be used if reduction of 1.0 log for the indicators formaldehyde and acetone is demonstrated during pilot scale as part of the design of the ozonation process.

c. Both Ozone and the BAC processes must be individually validated at full-scale with the same level of removal for the four indicators listed in this subsection.

d. At full-scale, the ozone/BAC process shall continually be monitored and recorded using surrogate and/or operational parameters with alert and action levels as approved under the Operations Plan, pursuant to R18-9-F836.

4. Each reverse osmosis membrane selected shall meet the criteria set forth in ASTM International, Designation D4194-23, "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices",

a. For a reverse osmosis treatment process, an AWPRA shall propose the following elements in a plan submitted to the Department for approval in the permit application pursuant to R18-9-C816(A)(2)(d):

i. Ongoing performance monitoring using at least one surrogate and/or operational parameter that is capable of being monitored and recorded continuously, and

ii. Alarms indicating when the integrity of the reverse osmosis membrane has been compromised.

b. The proposal shall identify:

i. The chemical control point,

ii. The surrogate(s) and/or operational parameter(s), and

iii. The alert and action levels for the surrogate(s) and/or operational parameter(s) that indicate when the integrity has been compromised.

5. During full-scale operation of a reverse osmosis treatment process, the AWPRA shall:

a. Continuously monitor and record the surrogate and/or operational parameter(s) that indicate when the integrity of the process has been compromised, and

b. Record when the alert and action levels established are exceeded pursuant to R18-9-F836.

D. Other Requirements.

1. TOC Removal. An AWPRA shall select, achieve, and maintain an up-to-date TOC limit in the advanced treated water, along with the associated alert and action levels, pursuant to R18-9-F834(B) or (C).

2. Corrosion Control. An AWPRA shall establish corrosion control provisions in the design and operation of the AWTF in accordance with, but not limited to, the following requirements:

a. Within six months of the introduction of advanced treated water as a new water source, or following any treatment changes at the AWTF affecting advanced treated water quality, an AWPRA shall control lead and copper pursuant to the requirements of A.A.C. R18-4-111,

b. An AWPRA shall evaluate any anticipated corrosivity effects through corrosivity tests or evaluations which shall include, but are not limited to:

i. Developing an understanding of factors affecting internal corrosion,

ii. Determining the extent and magnitude of corrosion,

iii. Assessing corrosion control alternatives,

iv. Selecting a corrosion control strategy,

v. Implementing a corrosion control program,

vi. Monitoring the effectiveness of the corrosion control program, and

vii. Optimizing the control program, if necessary, and

c. The Department may require an AWPRA to conduct additional corrosivity-related water quality monitoring,

d. In addition to the requirements of this section, corrosion control shall be conducted using good engineering practices. Methods for corrosion control shall be approved if the AWPRA can demonstrate that the measures meet or exceed the criteria in this subsection.

i. ADEQ shall develop and make available guidance on conducting corrosion control.

ii. Corrosion control conducted in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

3. Nitrogen Management. An AWPRA shall choose one of the following three denitrification approaches:

a. Water Reclamation Facility Approach. An AWPRA applicant reliably denitrifying at the water reclamation facility(s) shall include at least two critical control points to monitor ammonia, nitrate and nitrite:

i. A critical control point at a designated, off-spec diversion point which is monitored using continuous online analyzers, and

ii. A critical control point for monitoring the advanced treated water in order to verify compliance with the Nitrite and Nitrate as Nitrogen Tier 1 MCL pursuant to R18-9-E829.

b. AWTF Approach. An AWPRA applicant removing nitrogen species at the AWTF shall demonstrate nitrogen removal to the Nitrite and Nitrate as Nitrogen Tier 1 MCL pursuant to R18-9-E829 through an AWTF treatment process configuration, and shall include multiple critical control points:

i. A critical control point for monitoring ammonia, nitrite, and nitrate at the treated wastewater influent in order to assess the ongoing treatability within the treatment train,

ii. A critical control point located at each treatment barrier in the design responsible for the removal of ammonia (if applicable), nitrite, and nitrate, and

iii. A critical control point for monitoring the advanced treated water in order to verify compliance with the Nitrite and Nitrate as Nitrogen Tier 1 MCL pursuant to R18-9-E829.

c. Alternative Approach. An AWPRA applicant shall demonstrate a design approach that effectively and reliably removes nitrogen species for the purposes of treatment train viability and water quality compliance with applicable MCLs.

4. AOP Treatment Process. An AWPRA applicant shall include an AOP treatment process in their pilot and full-scale treatment trains. Demonstration of AOP performance shall be achieved through one of the following two methods:
    a. 1,4-Dioxane Indicator. AOP shall be validated to demonstrate that AOP can reliably achieve no less than 0.5 log reduction of the 1,4-dioxane indicator. If 1,4-dioxane is used as the AOP performance benchmark, it shall be monitored as a Tier 3 performance based indicator with an associated action level pursuant to R18-9-E827; or
    b. Alternative Compound Indicator. An AWPRA applicant may propose an alternative compound to 1,4-dioxane for AOP performance if the following criteria are met:
        i. Alternative indicators shall demonstrate resistance to elimination through other treatment methods, including biological degradation, adsorption processes, Reverse Osmosis/Nanofiltration, and conventional oxidation techniques such as hypochlorite, chloramines, permanganate, or chlorine dioxide (e.g., 1,4-Dioxane),
        ii. Each pilot study should involve spiking and measuring indicator compound removal. Spiking 1,4-Dioxane (i.e., reference compound) and calculating removal percentages to compare with other widely accepted compounds,
        iii. In pilot testing, the final concentration of any indicator compound (post-AOP treatment) should exceed the minimum reporting limit,
        iv. Operating conditions and critical monitoring parameter ranges from pilot testing shall be reported for Departmental verification and setting of monitoring parameter ranges,
        v. An AWPRA applicant must identify AWTF-specific AOP challenges, such as the scavenging of hydroxyl radicals by carbonates, bicarbonates, nitrites, nitrate, bromides, Natural Organic Matter (NOM), pH and UV light absorption,
        vi. If comprehensive pilot testing is not conducted (e.g., shorter timelines or limited scope), an AOP treatment process shall be demonstrated to achieve at least 0.5 log removal of 1,4-dioxane,
        vii. Any process sequence proposed must be validated with a rigorous study, and
        viii. Correlation with other trace organics that were considered in the study, “Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility”, along with a demonstration of an equivalent removal value for each of the trace organics.

5. AOP Validation Study Report. An AWPRA shall compile an AOP Validation Study Report which identifies:
    a. The critical control points and/or surrogate(s) and/or operational parameter(s), and
    b. Alert and action levels for the surrogate(s) and/or operational parameter(s) that indicate whether the minimum 0.5 log 1,4-dioxane reduction design criterion is being met.

6. At least one surrogate and/or operational parameter shall be capable of being monitored and recorded continuously and have associated alarms that indicate when the AOP is not operating as designed.
7. Failure Response Time. An AWPRA applicant must provide detailed design calculations identifying failure response time and specific means used to address failure response time.
    a. Factors include, but are not limited to:
        i. Level and redundancy of online instrumentation,
        ii. Sophistication and speed of automated alarm responses, and
        iii. Availability of operators and their response time.
    b. Mitigation measures include, but are not limited to, engineered storage buffers which, when used, must be sized adequately to hold off-spec water for a time period no shorter than the failure response time.
    c. If an AWPRA applicant proposes a treatment train configuration that is not followed by an engineered storage buffer, the following is required:
        i. Appropriate process control for water quality assurance,
        ii. Managerial control for demand is present,
        iii. An operational barrier for pathogen control and chemical peaks attenuation.
    d. If an engineered storage buffer is proposed, an AWPRA applicant shall justify the volume selected and account for short circuiting.
8. A treatment process configuration shall be designed to meet the Tier 1 limits utilizing, as a source, either:
    a. The Tier 1 chemicals and concentrations pursuant to R18-9-C814(C)(2); or
    b. The treated wastewater.
9. Cross-Connection. An AWPRA applicant shall develop, and the AWPRA permittee shall implement, cross-connection control measures which include, but are not limited to:
    a. Cross-connection evaluations during design, construction, and operation of the AWTF,
    b. Cross-connection control surveys, initially within one year of commencing full-scale operation, and ongoing annually thereafter,
    c. Reporting of any cross-connection incidents identified during the cross-connection control surveys to the Department in the manner prescribed by the AWP permit, along with a detailed summary of the nature and cause of the problem, the resulting corrective actions taken, and data confirming that those corrective actions will not impact advanced treated water, and

d. A plan describing how the SCADA system communicates and interoperates with the SCADA systems of all AWPRA facilities in the AWP project.

10. Method Detection Limit. When there is no reliable analytical method that is technically feasible to measure a contaminant at an established health advisory concentration pursuant to R18-9-E826(D), the health advisory value shall be set at the lowest Method Detection Limit of the corresponding and most sensitive EPA-approved method.

E. An AWPRA shall meet the following minimum design criteria in designing and operating a full-scale water reclamation facility that delivers treated wastewater to an AWTF:

1. An AWPRA water reclamation facility shall have secondary treatment that utilizes oxidation processes that remove biodegradable organic matter and suspended solids,
2. An AWPRA water reclamation facility shall meet discharge limit requirements for:
   a. Biological Oxygen Demand (BOD),
   b. Total Suspended Solids (TSS), and
   c. pH pursuant to subsection (B)(1) of R18-9-B204, and
3. An AWPRA water reclamation facility shall meet a minimum solids retention time (SRT) of 15 days. A reduction in SRT may be requested and approved by the Department if wastewater characterization demonstrates that over all seasons (represented by 12 monthly values) the proposed SRT is consistent with nitrogen reduction and COCs.
4. An AWPRA water reclamation facility shall meet the requirements for Total Nitrogen (TN) in the APP program. The TN requirements in R18-9-B204 shall be followed in order to discharge any treated wastewater or treated off-spec wastewater which cannot be supplied to the AWTF,
5. An AWPRA water reclamation facility shall be operated to produce treated wastewater of consistent quality in accordance with approved engineering design reports and the water reclamation facility operations plan. The AWPRA shall provide to the water reclamation facility a list of operational parameters, such pH, SRT, Hydraulic retention time (HRT), Dissolved Oxygen (DO), BOD, cBOD and others for the water reclamation facility.

F. In addition to the requirements of this section, treatment process configurations shall be designed using good engineering practices. Treatment process configurations shall be approved if the AWPRA applicant can demonstrate that the treatment process configuration meets or exceeds the minimum design criteria in this section.

1. ADEQ shall develop and make available guidance on designing treatment process configurations.
2. Treatment process configurations designed in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

R18-9-F833. Technical, Managerial, and Financial Demonstration

A. An AWPRA applicant shall submit the following to the Department as a demonstration of technical, managerial, and financial capacity:

1. Technical Capacity. An AWPRA applicant's technical demonstration shall include, but is not limited to:
    a. A demonstration of the availability of an existing water source or contingency plans for an alternative source in the event of AWTF failure,
    b. Comprehensive technical and engineering specifications for the AWTF, including, but not limited to, the following:
        i. Design and treatment capacity,
        ii. Demonstration of sufficient AWP source water quantity and quality,
        iii. Demonstration of technical capability to implement an enhanced source control program,
        iv. Information on storage and distribution processes,
        v. A cross-connection control plan,
        vi. A corrosion control plan, and
        vii. Manufacturer specifications showing the life span of AWTF components, and
    c. An ongoing monitoring plan, including, but not limited to, the following:
        i. Online compliance monitoring for critical control points, and
        ii. Performance monitoring and compliance monitoring for advanced treated water, and
    d. A demonstration of the ability to respond to emergency situations including water quality excursions,
    e. Documentation that the AWTF will be operated by a certified AWP operator pursuant to R18-9-B804, and
    f. An operations plan, pursuant to R18-9-F836, including, but not limited to:
        i. Maintenance requirements per the manufacturer's specification, and
        ii. Repair and replacement protocols.
2. Managerial Capacity. An AWPRA applicant's managerial demonstration shall include, but is not limited to:
    a. Documentation of ownership, management, and organization information, including, but not limited to:
        i. An organizational chart, and
        ii. Job descriptions and responsibilities, and
    b. Information or copies of contractual agreements between AWPRA partners or any other entity associated with an AWP Project, including but not limited to:
        i. Sewer collection systems,
        ii. Water Reclamation Facilities,

iii. Source water conveyance systems,

iv. Advanced Water Treatment Facilities,

v. Water distribution systems,

vi. Blending Facilities,

vii. Sale prices of source water,

viii. Quality of source water,

ix. Duration of agreement, and

x. Compliance and reporting responsibilities, and

c. Documentation of groundwater or surface water discharge permits or recycled water permits addressing potential discharges from an AWTF in contingency situations, including, but not limited to, off-spec water disposal,

d. Operational information, including, but not limited to:

i. Certified operator credentials,

ii. The number of available operators,

iii. A training plan for staff,

iv. Technical competency,

v. Technical knowledge and implementation, and

vi. An Operations Plan, pursuant to R18-9-F836, and

e. An outline of tools and procedures employed in the management of the facility, including, but not limited to:

i. An asset management and maintenance plan, and

ii. A computerized maintenance management system.

3. Financial Capacity. An AWPRA applicant's financial demonstration shall include, but is not limited to:

a. Projecting the capital cost of the project,

b. Identifying ongoing cost, including, but not limited to:

i. Operation and maintenance costs,

ii. Capital replacement costs,

iii. Energy costs,

iv. Personnel costs, and

v. 20-year lifecycle cost of equipment, and

c. A five-year financial projection, including, but not limited to, planning and management of continuous funding sources to cover the costs of the AWP project,

d. Performing financial audits and bond rating, and

e. Performing rate studies or assessment of impact fees.

B. In addition to the requirements of this section, technical, managerial, and financial capacity shall be demonstrated using best practices. Similar technical, managerial, and financial demonstration approaches shall be approved if the Department determines that the alternate technical, managerial, and financial demonstration meets or exceeds the technical, managerial, and financial criteria listed above.

1. ADEQ shall develop and make available guidance on developing a technical, managerial, and financial demonstration.
2. A technical, managerial, and financial demonstration developed in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using best practices.

R18-9-F834. Total Organic Carbon Management

A. An AWPRA shall select, achieve, and maintain an up-to-date TOC limit in the advanced treated water using one of the two approaches described in subsections (B) and (C) below.

1. Upon AWTF operation, an AWPRA may switch between the two approaches each calendar year.
2. The TOC management annual approach shall be reported as part of the annual report pursuant to R18-9-E831.

B. Standard Approach or Limit.

1. An AWTF shall not exceed 2 mg/L of TOC in the advanced treated water.
2. The AWPRA shall monitor TOC using continuous online analyzers in the advanced treated water.

C. Site-Specific Approach or Limit. An AWPRA shall perform the two procedures described in subsections (C)(1) and (2) below. The site-specific TOC limit shall be the lower of the two preliminary TOC values obtained from these procedures.

1. Trace Organics Removal Procedure. The AWPRA shall submit a plan to characterize the TOC of all original drinking water sources that feed the collection system(s) that are used by the AWTF as a treated wastewater source. This plan shall be submitted for approval by the Department as part of the Pilot Study Plan pursuant to R18-9-C815(B)(3) and (D) and again in the permit application as part of the R18-9-C816(A)(2)(d) submittals.
    a. Original Drinking Water TOC Characterization requires, but is not limited to, the following:
        i. Use of Departmentally approved TOC sampling locations,
        ii. Sampling for a minimum of one year,
        iii. Sampling at weekly intervals,
        iv. Calculation of the TOC at the 50^{th} percentile (median), 75^{th} percentile, and 95^{th} percentile,
        v. Establishment of a TOC alert level at the 75^{th} percentile, and

vi. Establishment of the TOC action level at 1.5 × 95th percentile.

b. Upon the characterization of TOC in the original drinking water and approval from the Department, an AWPRA shall monitor for TOC in the advanced treated water using continuous online analyzers.

c. For the purposes of this subsection, the preliminary TOC value in mg/L for the Trace Organics Removal Procedure is the action level established in subsection (C)(1)(a)(vi) above.

2. Disinfection Byproducts Precursor Reduction Procedure.

a. Method 5710 C: "Simulated Distribution System Trihalomethanes (SDS - THM)"

i. The AWPRA shall apply 5710 C Method "Simulated Distribution System Trihalomethanes (SDS - THM)" to the advanced treated water in order to determine the total trihalomethane (THM) concentration.

ii. Testing and sampling shall be conducted monthly for one year.

iii. The AWPRA shall simultaneously sample for TOC in mg/L in the advanced treated water monthly for one year.

iv. If the average THM concentration is below the corresponding MCL for THM pursuant to R18-9-E825, the average TOC value from subsection (C)(2)(a)(iii) is the Method 5710C TOC value for the purposes of comparison in subsection (C)(2)(d) below.

v. If the average THM concentration is at or above the corresponding THM MCL pursuant to R18-9-E825, the AWPRA may not use the average TOC value from subsection (C)(2)(a)(iii) as the Method 5710C TOC value. The AWPRA may adjust components of their operation and repeat the steps in subsection (C)(2)(a) until an average THM concentration in the advanced treated water is below the corresponding THM MCL pursuant to R18-9-E825.

b. The AWPRA shall submit the following information on the conditions at the time Method 5710 C from subsection (C)(2)(a) above was conducted to the Department as part of the Pilot Study Report pursuant to R18-9-C815(D) and again in the permit application as part of the R18-9-C816(A)(2)(d) submittals:

i. Temperature,

ii. pH,

iii. Disinfectant dose,

iv. Residual and reaction time within the distribution system, and

v. Other standard conditions as described in Section 5710 B "Trihalomethane Formation Potential (THMFP)".

c. CCL5 - Disinfectant Byproducts Sampling Method.

i. The AWPRA shall sample for the following disinfection byproducts in the advanced treated water, Formaldehyde (CAS No. 50-00-0) and N-Nitrosodimethylamine (NDMA) (CAS No. 65-75-9), which are the only disinfection byproducts that exist in both EPA's "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5" and EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

ii. Sampling shall be conducted monthly for one year.

iii. The AWPRA shall simultaneously sample for TOC in mg/L in the advanced treated water monthly for one year.

iv. If the average sampling result for any one DBP is below the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", the average TOC value from subsection (C)(2)(c)(iii) is the CCL5 DBP TOC value for the purposes of comparison in subsection (C)(2)(d) below.

v. If the average sampling result for any one DBP is at or above the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables", the AWPRA may not use the average TOC value from subsection (C)(2)(c)(iii) as the CCL5 DBP TOC value. The AWPRA may adjust components of their operation and repeat the steps in subsection (C)(2)(c) until the average sampling results from any one DBP is below the corresponding health advisory in EPA's "2018 Edition of the Drinking Water Standards and Health Advisories Tables".

d. The lower of the two resultant TOC values in mg/L derived from the methods described in subsections (C)(2)(a) and (C)(2)(c) above is the preliminary TOC value for the Disinfection Byproducts Precursor Reduction Procedure.

3. AWPRA's Site-Specific TOC Approach or Limit. The lower of the two preliminary TOC values in mg/L derived from the two procedures in (C)(1) and (2) above is the AWPRA's site-specific TOC limit.

4. Once a site-specific TOC approach or limit is ascertained, an AWPRA shall establish a TOC action level and alert level based on that approach or limit, using the lower of the two values derived from subsections (C)(1) and (2). Upon the exceedance of a TOC action level, the AWPRA shall conduct one of the following two actions within 72 hours of becoming aware of the exceedance:

a. Stop conveying advanced treated water, investigate, identify, and correct the issue; or

b. Correct the issue with confirmation that advanced treated water TOC does not exceed the action level, and identify the issue.

5. Frequency of Site-Specific Procedures. AWPRA's re-selecting the site-specific TOC approach to begin a new calendar year shall repeat the two procedures in subsections (C)(1) and (2) in order to reestablish an up-to-date TOC action level and TOC alert level.

R18-9-F835. Full Scale Verification

A. An AWPRA applicant shall conduct Full-Scale Verification of the AWTF. The AWPRA applicant shall develop a Full-Scale Verification Plan for submission to the Department and shall perform full-scale verification testing of the AWTF in compliance with the Plan.

1. If an AWPRA builds a pilot facility to full-scale, the AWPRA applicant may, instead, opt to conduct piloting and full-scale verification simultaneously. If the AWPRA pursues this option, the AWPRA shall:
   a. Consult with the Department, and
   b. Develop and submit a Hybrid Pilot and Full-Scale Verification Plan to the Department for review and comment prior to conducting piloting and full scale verification under this section, R18-9-C815, and other requirements which are previously determined through consultation with the Department, and
   c. For the purposes of the permit application pursuant to R18-9-C816, submit the Hybrid Pilot and Full-Scale Verification Plan and a Hybrid Pilot and Full-Scale Verification Report in lieu of the submission requirements at R18-9-C816(A)(2)(g) and (h).
2. An AWPRA applicant shall provide evidence of an APP authorizing any discharge from an AWTF that occurred, occurs or will occur during piloting, full-scale verification, operation or otherwise.

B. Full-Scale Verification Plan. A Full-Scale Verification Testing Plan shall be developed and shall include, but is not limited to, the following requirements:

1. Detailed Testing Plan. The AWPRA applicant shall outline the verification testing procedure for each process within the AWTF, including, but not limited to:
   a. Treatment technologies and processes,
   b. Continuous online analyzers,
   c. Critical control points,
   d. Alarm systems, and
   e. Data recording instruments.
2. Monitoring Plan. The AWPRA applicant shall develop a Monitoring Plan pursuant to R18-9-E829.
3. Alarm System and Shutdown Testing Plan. The AWPRA applicant shall develop a plan to test and verify the functionality of all alarms, shutdown mechanisms, and processes proposed to be utilized in the Operations Plan developed pursuant to R18-9-F836.

4. Advanced Treated Water Diversion Plan. The AWPRA applicant shall develop a plan to obtain all necessary permits and approvals from the Department or other authorities for the purpose of diverting advanced treated water during the full-scale verification testing period.

C. Testing. Full-scale verification testing shall be conducted in accordance with the Plan established in subsection (B) as well as the requirements in this subsection:

1. The minimum testing period for AWPRAs conducting full-scale verification shall be one year,
2. An AWPRA shall, throughout the testing period, divert all advanced treated water in a manner approved by the Department pursuant to the AWP permit,
3. Before testing occurs, an AWPRA applicant shall confirm with the Department that any water reclamation facility providing treated wastewater to the AWTF has been issued an amendment to their APP(s) for provision of treated wastewater to an AWTF, and shall confirm that copies of the amended permit(s) are recorded in the AWPRA's Joint Plan pursuant to R18-9-B805.

D. Report. At the conclusion of the full-scale verification testing period, the AWPRA shall prepare and submit, in accordance with the compliance schedule established in the AWP permit, a final Full-Scale Verification Report to the Department for approval. The Report shall, at a minimum, include all information related to full-scale verification testing performed pursuant to this section, such as, but not limited to, the following components:

1. The date, time, frequency and exact place of sampling,
2. The name of each individual who performed the sampling,
3. The procedures used to collect the samples,
4. The dates the sample analyses were completed,
5. The name of each individual or laboratory performing sample analysis,
6. The analytical techniques or methods used to perform the sampling and analysis,
7. The chain of custody records,
8. Any field notes relating to the information described under this subsection,
9. The sampling results, and
10. Corresponding laboratory data for all samples.

E. An AWPRA shall not distribute advanced treated water to consumers until Departmental authorization is obtained.

R18-9-F836. Operations Plan

A. An AWPRA shall develop an Operations Plan in accordance with the compliance schedule established in the AWP permit which shall be followed throughout operation of the AWTF.

B. The Operations Plan shall include, but is not limited to, the following criteria:

1. A description of the operation of each treatment process and standard operating procedure,
2. Process schematics showing pathogen and chemical removal critical control points, alarms, and online analyzers, including all requirements pursuant to R18-9-E828(D),
3. A list of established alert levels and action levels at each critical control point,
4. A description of all inspection and maintenance protocols, schedules and other requirements for treatment process equipment,
5. A description of the ongoing monitoring requirements pursuant to R18-9-E829 and the reporting requirements pursuant to R18-9-E830,
6. The development of an emergency operations and response plan to identify and address upsets, failures, or emergency situations arising in the treatment train in an AWPRA facility that is responsible for producing advanced treated water. The emergency operations and response plan shall include, but is not limited to, the following requirements:
   a. Identification of upset conditions or emergency situations triggering a response under this subsection, including, but not limited to:
      i. Failure of critical control points,
      ii. Diversion of off-spec water,
      iii. Loss of source water to the AWTF,
      iv. Any exceedances of the alert levels and action levels, and
      v. Failures which constitute an acute exposure threat, including failure to meet pathogen log reduction values pursuant to R18-9-E828, and failure to meet Nitrite and Nitrate as Nitrogen MCLs pursuant to R18-9-E829,
   b. A decision-making procedure and the development of an off-spec water response to divert AWP process water or advanced treated water as a result of any treatment process failure or water quality deviation,
   c. Any failure to achieve the minimum target log reduction must be documented and a summary of the causes and corrective action must be reported to the Department, and
      i. The AWPRA shall take immediate action to discontinue the delivery of advanced treated water to the distribution system.
      ii. The AWPRA shall notify the Department and any public water system that is receiving the AWP project water within 60 minutes.

d. Development of a timely response procedure in the event that advanced treated water violates a requirement of this Article, including, but not limited to:

i. Identification and investigation of the points of failure within the treatment train and at the AWTF,

ii. A procedure to resolve identified failures,

iii. Clear specifications regarding the time required for response to failures or exceedances, and

iv. A procedure for the utilization of automated systems equipped with triggers and alarms, as necessary,

v. Consideration of alternative water sources, as necessary, to ensure delivery of a continuous water supply, and

vi. Compliance with all applicable public notice requirements of the Safe Drinking Water Act, and

e. Development of a shutdown plan establishing shutdown and post-shutdown protocols, including, but not limited to:

i. A procedure for draining piping and tanks, as necessary, to prevent freezing or the accumulation of stagnant non-compliant water, and

ii. A procedure for managing post-shutdown conditions, and

7. A description of staffing requirements at the AWTF including, but not limited to, the following criteria:

a. The roles and responsibilities of all staff,

b. The status of, and requirements for, certified operators,

c. A description of the annual training and continuous education requirements for all staff, and

d. A description of any provisions for training new personnel, and

8. A description of the SCADA system utilized at the AWTF along with, but not limited to, the following additional SCADA requirements:

a. A description of how the system will assist the AWTF in achieving compliance, when necessary,

b. A description of how the SCADA system will communicate and interoperate with the SCADA systems of all AWPRA facilities that provide treatment pursuant to this Article,

c. Information on how the system acquires and utilizes monitoring data to inform operators, identify failures at critical control points, and respond to failures,

d. A procedure for testing the system,

e. A protocol/procedure to secure and protect the SCADA system from unauthorized access and cyberattack, and

f. Establishment of a SCADA system testing schedule, and

9. A description of the communication procedures between the AWPRA and all relevant treatment plant operators for situations including, but not limited to:

a. Normal operations, and

b. Upset conditions and emergency response protocols.

C. In addition to the requirements of this section, an Operations Plan shall be developed using good engineering practices and best management practices. Similar Operations Plan criteria shall be approved if the AWPRA applicant can demonstrate that the Operations Plan components meet or exceed the criteria listed above.

1. ADEQ shall develop and make available guidance on developing an AWP Operations Plan.
2. An AWP Operations Plan developed in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

D. An AWPRA shall submit the Operations Plan to the Department for approval as a compliance schedule item under the AWP permit.

E. An AWPRA shall update the Operations Plan as necessary following any modifications to the treatment process that affect the operational procedures of the AWTF. The updated Operations Plan shall be submitted to the Department for approval as a component of a permit amendment application.

R18-9-F837. Vulnerability Assessment

A. An AWPRA shall conduct a vulnerability assessment for the AWP project for the purpose of identifying areas and processes with a potential to be vulnerable to attack, sabotage, or disruption.

B. The AWPRA shall consider and assess all potential hazards associated with contaminants in the municipal wastewater source.

C. The AWPRA shall develop an emergency response plan for identified hazards the AWP project may face.

D. The SCADA systems of all AWPRA facilities included in the AWP project that provide treatment pursuant to this Article shall be designed and operated such that they are secured and protected, both physically and electronically, from unauthorized access and cyberattack.

E. The AWPRA shall periodically review the vulnerability assessment along with the permit renewal pursuant to R18-9-D822, at a minimum, or at the Director's discretion. A vulnerability assessment update shall include the identification of any new hazards and the corresponding risk management controls the AWPRA will establish.

F. In addition to the requirements of this section, a vulnerability assessment shall be conducted using Best Management Practices. Methods for conducting the vulnerability assessment shall be approved if the AWPRA applicant can demonstrate that the method is sufficiently detailed and robust for the purpose of conducting a protective vulnerability assessment.

1. ADEQ shall develop and make available guidance on conducting an AWP vulnerability assessment.
2. An AWP vulnerability assessment conducted in a manner consistent with the criteria contained in an applicable ADEQ guidance document shall be considered to have been conducted using good engineering practices.

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 9

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

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA

and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program.

This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative	Minimal	

	impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).		
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate

and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DRP regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general

requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

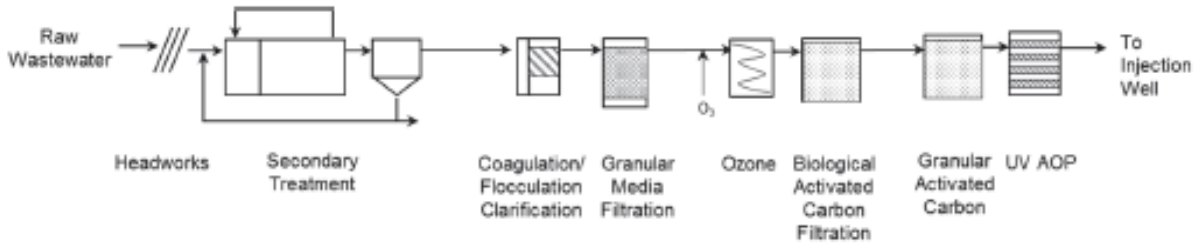
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

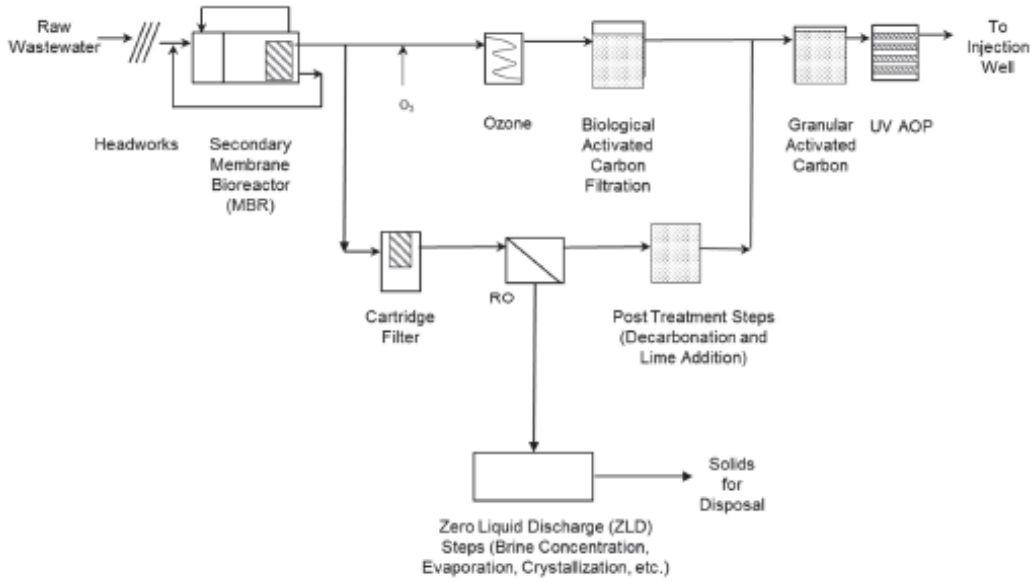
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



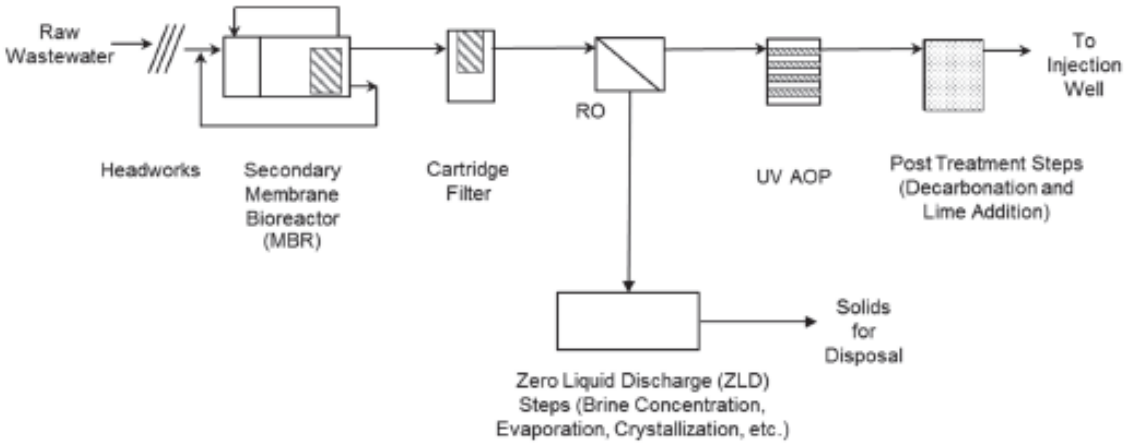
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390

Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP

development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water

supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and

pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program.

As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs.

ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

AWP NFRM Public Comments - 18 AAC 9

Comment 1: General Public
Standard methods have become increasingly obsolete in addressing modern water quality concerns, because emerging contaminants are found in reclaimed waters potentially affecting public health. These contaminants include bacterial pathogens (particularly those related to antibiotic-resistant ones), viral pathogens, protozoal hosts for intracellular pathogens, and extracellular DNA (e.g., antibiotic resistance genes [ARGs]). Many of these pathogens are fastidious, slow growing, and difficult to culture for routine monitoring (viable but non-culturable). Any rulemaking must be required to remove and test for these considerations.

Comment 2: General Public
I would like to know if AWP has been successfully used in other locations, and what the rate of failure is for those systems.

Comment 3: General Public
For my entire career, waters treated for potable purposes were never referred to as being "Purified". Purified Water has a very specific definition, quality is measured in resistivity vs. conductivity and, when put on a petri dish, will not show biological activity. While "purified" is used as an adjective in the phrase "purified water", the process of "water purification" is a verb, action word, indicating that the water being treated will eventually result in producing "purified water". Unless these treated waters are measured in megohms (Mohm), that is a very misleading title which may, in fact, result in legal activity in the event any lives are negatively impacted. I realize that "Toilet To Tap" or "Direct Potable Reuse" are unsavory titles for marketing purposes, but that should not open the door to misleading advertising, either. Purified water is not being produced or delivered.

Comment 4: General Public
AWP will impact disinfection byproducts (DBPs). Current disinfection practices will need to be changed and, most likely, be modified on an almost continuous basis given that water qualities can change on a continuous basis. There are health benefits associated with minerals that are naturally occurring in potable water supplies, especially from aquifers. Calcium, magnesium and any variety of trace metals are all beneficial, in certain amounts, to human health. What are the plans for addressing these types of issues?

Comment 5: General Public
The solution to pollution is dilution. Water is the universal solvent. Let's consider AWP as being the pollutant, i.e., man-made. So, rather than bringing this "pollutant" right to the front door of the potable treatment system, why not put it back into the natural environment, i.e. rivers, aquifers, lakes etc. Once there, Mother Nature can take over, thus yielding a more "natural" product that is relatively benign in terms of water chemistry. All potable water treatment plants already have the means for treating these waters, so there would be little need for changing treatment schemes or practices. It's an easier sell to customers, no need for more pipes in the ground, and there's greater savings for customers.

Comment 6: General Public
We do not want sewage (a.k.a. – wastewater) mixed into our drinking water. There are too many toxins flushed down the drain and we don't want any of them in our body. We understand the importance of water conservation but this goes too far. The 'toilet to tap' rules you are suggesting should only be used in landscaping. There are too many chemicals and pharmaceuticals that go down the drain/toilet now to make it safe for humans. Can you guarantee 100% removal of all the bad stuff? Because we have no wish to consume someone else's blood thinner medication or diabetes medicine or birth control, etc.

Comment 7: General Public
We demand all fluoride be removed from public drinking water since it has been proved to be dangerous to our health.

Comment 8: General Public
Please check the Clean Water Act of 1972 which was approved to regulate the discharge of pollutants into U.S. water systems and to set quality standards. Most municipal water has fluoride, radiation, heavy metals, pharmaceuticals drugs, and industrial chemicals therein, each having detrimental health effects on the animals and humans who consume them. Researchers have long established that these and other drugs pass the municipal water filtering system which pose serious health risks.

Comment 9: General Public
There are healthier alternatives. First and foremost is education. Teach Arizona residents how to conserve water. Use taxpayer dollars to retrofit homes with gray water systems and/or rainwater catchment systems.

Comment 10: Interest Group
In our opinion, some aspects of the rules lead to over-regulation and in some aspects the rules are dismissive of the existing processes and requirements administered or regulated by EPA and ADEQ. While we recognize the comprehensive nature of the proposed rules, we are concerned that they may be overly burdensome and not sufficiently aligned with existing EPA and ADEQ requirements regarding source water. If ADEQ determines that further regulation of source water is necessary, such regulations should apply uniformly to all water systems—not just those under AWP permitting—to enhance public health protection across both conventional and advanced wastewater and water treatment systems. Requiring the permittee to monitor for unregulated Tier 2 and some Tier 3 compounds is overly burdensome and we feel does not belong in an AWP permit. The requirement by rule to monitor for Tier 2 and Tier 3 compounds is unnecessarily burdensome to an AWP permittee and establishes de facto water quality regulation outside any CWA or SDWA framework which is a major concern. If ADEQ feels these compounds are a concern then shouldn't this monitoring be required in

any other permit administered by ADEQ? The multi-barrier treatment technologies deployed for an AWP facility that purify water are inherently safer than any conventional water treatment system in Arizona. As an alternative, perhaps the framework for selecting Tier 2 chemicals as presented in the Rule could be included as guidance. ADEQ could work with the applicant to develop "performance-based indicators" based on unregulated chemicals unique to each permit and source watershed. The agreed-upon performance-based indicators could include Tier 2 and Tier 3 chemicals.

Comment 11: Utility

Align ongoing monitoring locations and frequency for Tier 1 and Tier 2 contaminants only at the "finished water" location and on a quarterly basis to mirror drinking water standards.

For Tier 1 contaminants, ongoing monitoring for regulated drinking water chemicals on treated wastewater at the end of the Water Reclamation Facility is burdensome and offers no compliance value. Each utility must decide if this monitoring point will assist in meeting compliance and should add monitoring for process control at locations that the utility decides will provide benefit for system operation. However, we support monitoring and reporting for Tier l on a quarterly basis at the finished water compliance point.

For Tier 2 contaminants, we do not support ongoing monitoring of treated wastewater at the end of the Water Reclamation Facility. Ongoing monitoring at this location prior to the AWTF is burdensome and offers no compliance value. Significant treatment for these contaminants occurs in the AWTF where compliance is designed to be met. Understanding new incoming dischargers is part of our Industrial Pretreatment program and if a concern arises, additional monitoring could be conducted as needed. We suggest that Tier 2 monitoring at this location only be required when the chemical is detected in the AWTF finished water in two consecutive quarters.

We will support permit compliance monitoring at the AWTF finished water compliance point on a quarterly basis, however, performing this monitoring at the suggested monthly interval is burdensome and is more stringent than Tier 1 contaminants which are primary drinking water standards. Requiring more stringent monitoring for Tier 2 chemicals over Tier 1 chemicals implies there is more concern about these chemicals than Tier 1. Due to the complex analytical techniques needed for many Tier 2 chemicals, test results are generally received from the lab two or more weeks after sample collection. It should be noted that treatment effectiveness is monitored continuously using online analyzers at Critical Control Points throughout the treatment process.

Comment 12: Utility

Though Scottsdale Water appreciates ADEQ including the use of the 2018 EPA Edition of Drinking Water Standards and Health Advisories Tables, the list should be qualified to only require compliance with chemicals that have an indicated human health risk. Many chemicals on this list are classified as "Indicates inadequate or no evidence in humans" or "Not classifiable as to human carcinogenicity", "Not likely to be carcinogenic to humans", etc. Including chemicals that do not pose a human health risk is overburdensome to the permittee.

Comment 13: Utility

Concerning R18-9-E826, identification of Tier 2 chemical list should not be the function of utilities and requiring such an exercise for all applicants could result in conflicting information, including inconsistent water quality permitted at AWP facilities and across the State of Arizona. It is recommended that ADEQ establish a listing of Tier 2 chemicals. Statewide universal standards for unregulated contaminants would provide the public with a higher level of confidence in ADEQ's safe drinking water oversight.

Comment 14: Utility

The requirement of maintaining a chemical inventory list of each non-domestic dischargers list is excessive and burdensome, particularly for larger urban collection systems. As written, the rule would require the AWPRA to survey every single non-domestic discharger in the collection system. For a large urban area this may include thousands of local businesses, many of which may not hold pretreatment permits with their local sewer authority.

Comment 15: Utility

The list of AWPRA determined Tier 2 chemicals may include contaminants for which there is no approved analytical methodology. The Clean Water Act and the Safe Drinking Water Act both identify a rigorous process to ensure that an approved and certifiable analytical laboratory method exists for a contaminant prior to issuing a new regulation. The proposed section in the draft AWP rule sidesteps this critical process which ensures laboratories across the region produce data of the same quality.

Comment 16: Utility

A recommendation of ADEQ's Advisory Panel on Emerging Contaminants, of which Tucson Water and Pima County served as committee chairs, suggested the use of surrogate chemical class categories for use in monitoring unregulated contaminants. This recommendation is still valid and is commonplace throughout the industry and academic literature. Surrogate chemicals can be chosen strategically by ADEQ, such that they are already associated with approved analytical methodology. We strongly encourage ADEQ to revisit the vast chemical inventory potential and allow for the use of representative surrogate compounds for Tier 2 reporting.

Comment 17: Interest Group

One of our primary concerns is the adequacy of water quality standards for potable reuse. The proposed rules must explicitly define baseline requirements to ensure the removal of contaminants of emerging concern, such as pharmaceuticals, personal care products, microplastics, and per- and polyfluoroalkyl substances (PFAS). PFAS, often called "forever chemicals," are particularly concerning due to their persistence in the environment and potential health impacts. While we recognize that the Arizona Department of Environmental Quality (ADEQ) is conducting a parallel

process to address PFAS contamination more broadly, it is critical that these chemicals be specifically addressed in the context of AWP systems. Current documents suggest a focus on tiered chemical control measures but lack sufficient emphasis on PFAS removal within AWP-specific regulations. Additionally, monitoring and reporting requirements should include provisions for real-time public disclosure of water quality data to build public trust and accountability.

Comment 18: Interest Group

We urge ADEQ to prioritize public education and outreach in communities where AWP projects are planned. The rules currently acknowledge the need to engage the public to overcome skepticism surrounding advanced water reuse, often referred to as the "yuck factor." However, more robust community involvement and transparent communication strategies are necessary to address the public's legitimate concerns about health and safety. This includes providing clear, accessible information about treatment processes, safeguards, and monitoring results.

Comment 19: Utility

In the proposed rule, "Tier 1 chemicals" are defined under R18-9-A801 with a reference to 40 CFR Part 141. There is no reference in the definition to an approval date for the MCL list. However, R18-9-E825 states "40 CFR Part 141 (published July 1, 2023)." How will the AWP program incorporate new MCLs, post-July 1, 2023?

Comment 20: Utility

MCLs for PFOA, PFOS, PFHxS, PHNA, HFPO-DA, and mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS were published in April 2024. Therefore, please verify these PFAS would not qualify as "Tier 1 chemicals" under R18-9-E825 even though they meet the definition in R18-9-A801?

Comment 21: Utility

Revise R18-9-E826(B) to be consistent with R18-9-E824(C).

Comment 22: Utility

Please clarify the following in R18-9-E826(C) - "List of chemicals" - Is it ADEQ's intention that the applicant/permittee list all ingredients (chemical composition)? For example, would a fuel station's inventory list "gasoline" or would it list benzene, toluene, xylene, etc.?

Comment 23: Utility

Please clarify the following in R18-9-E826(C) - "used, stored, or discharged" - It does not make sense to list all chemicals used or stored at a site if the use or storage area is not connected to the wastewater collection system. This requirement should be limited to chemicals discharged to, or with a potential to be discharged to, the wastewater collection system.

Comment 24: Utility

Please clarify the following in R18-9-E826(C) - "all non-domestic dischargers" - This should be limited to all impactful non- domestic dischargers as described in R18-9-E824(C).

Comment 25: Utility

Please clarify the following from R18-9-E826(D): How does an applicant/permittee find the latest health advisory notification levels in other states' drinking water programs or find the latest "reference dose or cancer slope factor in credible peer-reviewed literature or state or federal databases"? Will ADEQ have a database on their website that has up-to-date drinking water health advisories from EPA and from other states as well as reference doses and cancer slope factors?

Comment 26: Local Government

We are supportive of the requirement in R18-9-E826(A)(2)(c) to conduct a Tier 2 chemical contaminant analysis at every permit renewal.

Comment 27: Local Government

We are supportive of the requirement in R18-9-E826(C) to maintain a chemical inventory list.

Comment 28: Local Government

The equation for "expected daily concentration", in R18-9-E826(D)(3), which is derived from total (chemical) contaminant load divided by total influent flow rate, will result in an underestimate of the maximum concentration. Such a calculation, which is intended for comparison to health advisories, will introduce bias in the form of concentrations appearing to be lower. This equation should not be the sole method to determine the maximum design concentration for processes to remove chemical contaminants.

Comment 29: Local Government

Toxic chemicals, or potentially toxic chemicals, should be prohibited from being introduced into full-scale or operating AWP facilities to determine process efficacy. This practice is not allowed in drinking water facilities even for short periods of time. The appropriate procedure would be to perform bench or pilot testing with toxic or potentially toxic chemical contaminants.

Comment 30: Utility

As a basic tenet, when establishing new rules and regulations, the regulating agency should be fair, equitable, consistent, and predictable and should consider the technological and economic cost-benefit in the development and application of rules that impact the public. Under the proposed Tier 2 requirements set out in A.A.C. R18-9-E826, the lack of equitable, consistent, and predictable standards is concerning. Specifically, each Advanced Water Purification Responsible Agency (AWPRA) could be held to a different set of chemicals controls, monitoring, and reporting requirements. Under the proposed rule, these chemical controls, monitoring, and reporting requirements may vary from AWPRA to AWPRA, depending arbitrarily on when an AWPRA submits its AWP application, the AWPRA's source water, and the subjective decisions (current and future) of other state regulators, individual ADEQ staff members assigned to a particular AWPRA

project, and members of the Project Advisory Committee.
Under the SDWA, the Environmental Protection Agency (EPA) is required to establish health-based water quality standards using a 3-step process (EPA 816-F-04-030 - June, 2004) that includes the following:
1) Identify contaminants that present a risk to public health,
2) Determine a maximum contaminant level goal below which there is no known health-risk, and
3) Specify a feasible maximum contaminant level (MCL) based on health-risk. When it is not feasible (e.g., economically or technically) to specify an MCL, a treatment technique in lieu of an MCL will be established to ensure control of the contaminant.
We support the MCLs established in R18-9-E825 for Tier 1 Chemical Control. However, the proposed alert levels, action levels, and chemical control requirements set forth in R18-9-E826 for Tier 2 Chemical Control fail to meet the basic tenets of the SDWA and its 3-step process for establishing health-based water quality standards. We have previously commented to ADEQ that the constituents discussed in R18-9-E826 are, by definition, "not regulated in the SDWA" and thus have not been identified by EPA as a risk to public health. Thus, R18-9-E826 should be removed from the draft rule along with all other references to control, monitoring, and reporting of Tier 2 chemicals.
The proposed Tier 1 and Tier 3 chemical control requirements provide robust safeguards to protect public health. Furthermore, consistent with EPA's third tenet to establish treatment techniques in lieu of water quality standards, ADEQ has established in the rule robust chemical treatment techniques and barriers, beyond that of the SDWA, which forcefully protects public health. The Tier 2 requirements, which address only constituents not regulated in the SDWA and which have not been found by the EPA to pose a risk to public health, add little, if any safeguards, while adding significant costs that will be passed on to customers.
We are committed to working collaboratively with ADEQ on the development and eventual approval of Advanced Water Purification rules.
We strive to achieve a regulatory framework that provides ADEQ with the appropriate level of oversight, while also affording utilities the flexibility to design and operate facilities in a manner that aligns with the health-risk based requirements of the SDWA and offers economically viable options for our ratepayers.

Comment 31: General Public

Ever heard of Flint, Michigan? Of course, everyone in the water sector has. And what was the root cause? A new potable water source that was less scaling (not more corrosive) than the previous source. Proper treatment adjustments were not made and previously scaled pipes were cleaned, thus leading to metals leaching, including lead. With the proposed rules coming on line, what precautions are being made so as to prevent this phenomenon from happening? Most well waters here in Arizona are extremely hard; lots of water softeners in place. And municipalities, currently, do a decent job of controlling hardness via blending (when surface waters are also available) and chemical treatments. Now this new water source is going to be devoid of various ions that cause scaling; how is that to be controlled? Again, the waters do not have to be more corrosive, just less scaling, such that the saturation index is impacted and minerals are adsorbed back into solution.

Comment 32: General Public

We strongly support the inclusion of a digital early warning system in the direct potable reuse regulations, as mentioned in Page 3228, Section 10 of the proposed rule. These systems are vital for real-time monitoring and quick responses to contaminants, ensuring public health and safety. In the Phoenix region, reusing wastewater is essential for our city's growth and financial success. As citizens in the Phoenix region, we strongly support a digital early warning system in our wastewater. It will enhance the reliability of treated water, reduce the risk of pollutants, and increase our confidence in water reuse. We commend ADEQ for prioritizing this requirement and encouraging its adoption in the final regulation.

Comment 33: Interest Group

Requiring a wastewater system to deploy early-warning monitoring of the collections system does not fit with running an AWP. A wastewater utility may elect to conduct this step to assist with process control in operating its wastewater treatment process. However, the technology for early-warning systems relies on surrogate parameters and algorithms to correlate measured parameters to chemicals of concern. The technology is still relatively new to the industry and not what we would consider to be at a technological readiness level to be a requirement under rule.

Comment 34: Utility

Concerning Enhanced Source Control at R18-9-E824, the existing technologies for early warning of discharges in collection systems are not sophisticated nor reliable enough to be able to detect and differentiate chemicals of concern from other wastewater parameters. Furthermore, online monitoring instrumentation and rapid test kits do not have the capability of detecting all constituents of concern.

Comment 35: Utility

Some large-scale systems collect wastewater from multiple agencies, several of which are not participants in the AWP program. The AWPRA will not have jurisdiction to force agencies that contribute wastewater to the system but are not participants in the Advanced Water Purification Responsible Agency (AWPRA) program from more stringent requirements than currently exist. As an example, a utility that discharges wastewater to another utility's collection system that is connected to the main collection system under the AWPRA's jurisdiction will not have an obligation to maintain a list of non-domestic dischargers or inventories of chemicals used by commercial and industrial customers.

Comment 36: Utility

Under R18-9-E824(B)(11), there is a requirement that the enhanced source control program be audited at least every five

years. Will ADEQ provide guidance on components of the audit?

Comment 37: Utility

Add the following language (in italics) to R18-9-E824(D)(1), "ADEQ shall develop and make available guidance on developing, conducting, and maintaining an enhanced source control program *and guidance on performing an audit of the enhanced source control program*."

Comment 38: Utility

Add the following language (in italics) to R18-9-E824(E), "An AWPRA shall form and maintain a source control committee that includes representatives *from each AWPRA partner that is required to implement an enhanced source control program*, that supplies treated wastewater to the AWP project or that owns and/or operates a water reclamation facility…"

Comment 39: Interest Group

We are concerned with the strict requirement that the Direct Responsible Charge (DRC) be on-site at all times. We recommend that the language be adjusted to state that the DRC 'or their designee' must be available at all times. Additionally, the rule references that all collection and water reclamation facilities are operated by a grade 4 operator. We recommend Reclamation and Collections operations should be modified to apply in practical terms. Modifying the language to "operational oversight and management" could provide the necessary flexibility, ensuring that operations are managed effectively without mandating continuous hands-on control by highly certified personnel.

Comment 40: Utility

Additional water examination requirements for Grade 3 and 4 wastewater operators are too restrictive. With the qualifying experience and AWP certificate, a Wastewater Operator will have the full understanding of operator responsibility, training and response protocols for AWTF facility, the mere possession of an additional water certification is irrelevant.

Comment 41: Utility

Requiring a Direct Responsible Charge (DRC) to be on-site at all times is impractical and does not provide enough flexibility to the utility in managing operations. The Proposed Rule implies that the DRC must be onsite for potentially 16 hours per day. If the DRC is intended to be one person, that is not practical and creates redundancy with the shift operator. If the DRC is intended to be "multiple people" with a Grade 4 Drinking Water plus AWT certification, this puts a strain on utilities due to a statewide shortage of qualified operators and increased labor costs. It would better-serve the industry and workforce if the proposed rule language be amended to state that a DRC, or their designee, must be "available" at all times. The existing language will contribute to increased operational costs and operator fatigue.

Comment 42: Utility

The Rule references that all collection systems and water reclamation facilities are 'operated' by a grade 4 operator. We recommend Reclamation and Collections operations should be modified to apply in practical terms. Modifying the language to "operational oversight and management" could provide the necessary flexibility, ensuring that operations are managed effectively without mandating continuous hands-on control by highly certified personnel.

Comment 43: Utility

The Draft Rule does not clearly align with the established Arizona Administrative Code requirements for treatment facility rating and operator for staffing. A Grade 4 Collections or Grade 4 Water Reclamation Plant (WRP) is allowed to be operated by one level below the grading of the plant, i.e. a Grade 3 operator.

Comment 44: Utility

The wastewater treatment operator examination, with the additional drinking water component on the test, is an overly restrictive pre-qualification requirement. This type of exam does not offer standardized ISO 17024 metrics that ensure validity, reliability, and legal defensibility of the certification exam process.

Comment 45: Utility

At issue with Operator Certification at R18-9-B804, is the significant shortage of operators currently certified at the appropriate level to operate existing water treatment facilities. Increased requirements, although necessary, will continue to shrink that pool and may decrease interest. Many portions of the state do not have Grade 4 water or wastewater facilities currently which prevents candidates from obtaining qualifying experience. Modifying the prerequisites found in R18-9-B804(K) for advanced water treatment operator candidates to allow those with a Grade 3 Wastewater Treatment operator certification would increase the potential candidate pool.

Comment 46: Utility

Additionally at issue with Operator Certification at R18-9-B804, please revise the language to state that the operator in direct responsible charge (DRC) or their designee shall be available at all times. As written, the language implies the DRC is on-site at all times (24/7).

Comment 47: Utility

Should R18-9-B804(K)(5)(d) list "Grade 4" wastewater treatment certification, not Grade 3? Grade 3 is already included in R18-9-B804(K)(5)(c).

Comment 48: Utility

ADEQ and permittees have made tremendous efforts to protect water supplies through Arizona's Aquifer Protection Permit (APP) compliance program and pretreatment including implementation of Best Available Demonstrated Control Technology (BADCT). The proposed increased requirements in the new rule considerably downplays and undermines any earned trust built with this program and the current delivery of high-quality reclaimed water delivered to schools, parks, golf courses, and numerous recharge facilities where it replenishes our aquifer. Much of this water makes its way

back to the aquifer, where it is eventually reused as drinking water once again.

Comment 49: Interest Group

We are particularly concerned about the potential dewatering of rivers and streams that currently receive treated effluent. Effluent discharge often serves as a critical source of water for riparian habitats, supporting biodiversity and maintaining ecosystem services. Advanced water purification could divert these flows, leaving rivers like the Santa Cruz and the San Pedro and wetlands like the Gilbert Riparian Preserve and the Tres Rios Wetlands, among others, vulnerable to reduced volumes, which would harm aquatic and riparian ecosystems. While these ecological impacts may be beyond the scope of this rulemaking, none of these parallel processes will be implemented in a vacuum, and it is reasonable to at least acknowledge potential impacts and point to processes through which they will be addressed. The rules could account for these unintended consequences and provide strategies to mitigate impacts on environmental water needs.

Comment 50: Interest Group

An issue is the management of waste byproducts generated during the purification process. Concentrate streams often contain high levels of salts, heavy metals, PFAS, and other pollutants. While the rules include some guidance on source control and treatment, clear and enforceable guidelines for the safe disposal or reuse of these byproducts remain underdeveloped. Without robust waste management plans, the risks of secondary contamination to the environment are substantial.

Comment 51: General Public

How many billions of taxpayer money are you going to waste on this project?

Comment 52: Interest Group

We are concerned that some requirements of AWP are overly-burdensome and have the potential to make AWP unaffordable and infeasible for some communities. Our concern is from the perspective that the process of establishing new rules and regulations be fair, equitable, consistent, predictable, and consider the technological and economic cost-benefit in the development and application of rules that impact the public.

Comment 53: Interest Group

The proposed rules refer to AWP as a voluntary decision for a water provider. AWP could very well become an essential component of meeting a community's water demands. AWP being "voluntary" is an unacceptable basis for these over-reaching requirements that remain in the proposed rule.

Comment 54: Utility

The increased source control efforts come with additional financial burdens that may have an impact on future economic development where AWP will be used, either voluntarily or by necessity. These costs, in addition to the cost of constructing AWP infrastructure, will be passed on to customers. Much like the development of a maximum contaminant level (MCL) by the Environmental Protection Agency, financial impacts should be a consideration.

Comment 55: General Public

How will the costs described impact the cost of water for customers of utilities transitioning to AWP?

Comment 56: General Public

R18-9-A804(K)(5)(c) & (d) are exactly the same. I believe subsection (d) should be related to a Grade 4 Wastewater similar to (b).

Comment 57: Utility

To be consistent with the definition of AWP, revise the definition of "Advanced Water Purification Responsible Agency Partner" to include the italicized words shown here: "…*delivery to a drinking water treatment facility* or a drinking water distribution system."

Comment 58: Utility

Based on the definition of "treated water augmentation," delete "directly to the distribution system" from the definition of "Blending."

Comment 59: Utility

It is incorrect to state that raw wastewater "has not undergone any treatment." There are numerous wastewater pretreatment devices within Glendale's sewershed to minimize discharges of oil, grease, and/or sand into the municipal wastewater collection system. The definition should be revised (in italics): "…wastewater that is entering a Water Reclamation Facility *or Wastewater Treatment Plant* via a sewage collection system and which has not undergone any treatment…"

Comment 60: Interest Group

We believe that no other local or county government should have the ability to create a rule that could restrict the reuse activity permissible by the State. We recommend adding a provision in the rule related to: "No local or county governments are allowed to create a rule that prevents a community or water provider from implementing AWP."

Comment 61: Utility

Will a new source approval (as specified in R18-5-505(B)(1)(d)) be required for AWTF effluent? Or is it "presumptively considered surface water" (as written in the proposed R18-9-A803)?

Comment 62: Utility

Will an Approval to Construct (R18-5-505) and Approval of Construction (R18-5-507) be required when an existing drinking water system is modified to receive AWTF effluent? This may include connection at or prior to the intake to an existing drinking water treatment facility or connection directly into a potable water distribution system.

Comment 63: Local Government
We are concerned that the final AWP rules will be substantially weakened before publication based on the previously unpublished statement of achieving parity with drinking water rules. It is stated at 30 AAR 3186, under subtitle "Associated Rulemakings" that changes to Chapter 5 of Title 18 are based on the aim of achieving parity between drinking water regulations and AWP regulations. Considering all the constituents that are known to be or that could exist in wastewater and all the constituents not regulated by the SDWA, this is aiming substantially below the published Draft rules developed by a large number of stakeholders which were stricter than the drinking water rules.

Comment 64: Local Government
We are concerned that Region 9 of the EPA may not have specifically commented or opined on the State's creative way to implement AWP regulations by superseding drinking water design criteria and permitting regulations and leaving detail to unpublished guidance. Please confirm that the EPA's opinion has been solicited, especially on paragraphs R18-9-803(A) and (B). Please share the EPA's opinions and comments on the proposed rules if any have been received. Please confirm if any of the EPA's concerns have been incorporated.

Comment 65: Local Government
"Raw Water" and "Treated Water" Augmentation are expressly defined. The document remains silent as to whether ATW water would be allowed to be introduced into the finished water reservoir of a groundwater treatment plant or surface water treatment plant. The response to Draft Rule Comment #88 indicated that ATW could enter the finished water reservoir and that traditional new source approval data would need to be obtained, and that additional guidance will be forthcoming, and that it would be treated as a blending situation.
Please confirm our interpretation of the meaning of this response. We believe that this would require a re-evaluation of the existing DWTF disinfection adequacy and lead and copper control strategies due to water quality of the combined streams being different in the magnitude and quality of TOC and other aspects, and potentially more flow within the same detention volume. It would also require a blending evaluation (between sources and AWP treated water) or a re--evaluation if blending for MCL compliance (arsenic or nitrate) was already in practice.

Comment 66: Local Government
Arizona Revised Statutes 49-205 does not mention Local Authority (LA). When AWP facilities are overseen and regulated by ADEQ, such confidential data should be available to the LA if the LA is involved with the administration of the drinking water program for other portions of the water distribution system. Local authorities should be specifically allowed to access wastewater quality, treated wastewater quality, water quality, or treatment process performance information marked "confidential business information". Information which deals with the existence, absence, or concentration of constituents and contaminants detected in treated wastewater used as a source for an AWP facility should be made exempt from confidentiality provisions and available to the public or LA upon request.

Comment 67: Utility
The beneficial use of this water will be regulated by the Safe Drinking Water Act (SDWA), and as such, new rules proposed by ADEQ should not intentionally or unintentionally create standards or requirements that exceed the scope of the SDWA.

Comment 68: Utility
The process for obtaining a Demonstration Permit should be streamlined to allow parallel tracks for performing and submitting permit elements. This will encourage utilities and the public to interact on the subject of ATW and facilitate operator education and training on an operating system. According to R18-9-C817, an Advanced Water Purification Responsible Agency (AWPRA) applying for a Demonstration Permit must meet all the requirements of a full- scale permit, except for full-scale verification. While the intent of this approach is to ensure thorough evaluation, the approach mandates the completion of both a one-year Initial Source Water Characterization (ISWC) and a Pilot study before granting a Demonstration Permit. This sequential approach (requiring the ISWC to be completed prior to final design and the one-year pilot) could delay entities seeking a Demonstration Permit by up to two years. This delay is particularly concerning given that a public outreach program with taste testing is the most effective path toward public acceptance. The two-year delay would mean the demonstrations might not commence until just before the full-scale facility comes online. Utilizing a robust pilot "skid" for the Demonstration Permit is a prudent way to fulfill the pilot's intent, while building trust and acceptance with the public and elected officials. A shorter timeline for obtaining the Demonstration Permit would be beneficial. Risk assessments should consider that the volume of water used for taste testing is small and each person is drinking the water only one-time.

Comment 69: Utility
As written, R18-9-C817(C)(4) conflicts with both R18-9-C817(A) which states a demonstration permit is for "non-distribution purposes" and R18-9-C817(B) which prohibits the introduction of advanced treated water into a drinking water distribution system. Change the language at subsection (C)(4) to: "The AWP operator shall operate the demonstration facility for public outreach, finished water tasting, and other related non-distribution purposes."

Comment 70: Utility
To be consistent with the licensing timeframes and R18-9-C817(H), demonstration permits should be referred to in this section. For example: "The Department shall publish a notice of preliminary decision regarding the issuance or denial of a significant amendment, demonstration permit, or a final permit determination…"

Comment 71: Local Government
We support comprehensive initial and on-going (periodic) source water (wastewater) characterization. We do not support allowing pilot or full-scale demonstrations to commence before initial source water characterizations have been completed

and before comprehensive and complete testing objectives have been identified and accepted by ADEQ. Wording at R18-9-C815(B)(4) implies that pilot or full scale demonstration may commence before the initial source water characterization is complete which is equivalent to having an improperly conducted test, and/or a situation with insufficient oversight, and/or has the potential for allowing inappropriate design criteria to be implemented. We support the language at R18-9-C815(E) which allows the director to deny AWP permits where piloting was improperly conducted or insufficient to demonstrate compliance.

Comment 72: Local Government

We support language allowing the ADEQ director to deny an AWP permit based on non-compliance with the ISWC requirement, or improperly conducted, or in cases of insufficient data.

Comment 73: Local Government

We support language in R18-9-804(I)(3)(F) and R18-9-823(B)(3) and (C)(2) that the ADEQ director may terminate an AWP permit in cases of false information or misleading reports.

Comment 74: Local Government

We are supportive of the R18-9-E826(F) requirement for AWP permit applicants to select optimized demonstration (pilot) and full-scale AWTF treatment trains based on Tier 1 MCLs, a generated Tier 2 list, and a pass-through interference list.

Comment 75: Local Government

We are supportive of the requirement in R18-9-E826(F)(2) for AWP permit applicants to control chemicals at the source which are not sufficiently treatable in the selected AWT treatment train.

Comment 76: Local Government

We support demonstration-scale and full-scale verification requirements proposed in the rules.

Comment 77: Local Government

We previously commented on the definition of "Pilot", which has now changed in a manner that warrants additional comment. Pilot also means full-scale [R18-9-C815(A)(1)] and full-scale can now occur in lieu of piloting. The response to Draft Rule Comment #89 is "'Full scale' means the complete implementation and operation of an AWP system that is designed to treat wastewater to finished water standards and to meet the potable water demand of the community." This wording, along with other Initial Source Water Characterization (ISWC) provisions [R18-9-C815(B)(4)], appears to allow the permitting of a full-scale system before all chemicals of concern are identified in a ISWC and before all pilot objectives are known or before process capabilities have been verified over sufficient time. Such definitions and approach, made in the name of flexibility, would be an abdication of the responsibility to assure public health objectives and would be especially so if Tier 2 and Tier 3 chemical contaminant provisions of the Draft and Pre-publication rules were minimized or eliminated.

Comment 78: Utility

Full scale verification should follow current commissioning timelines used for treatment plants. Requiring a one-year Full Scale Verification is impractical and not the best use of highly treated water. The industry standard for bringing a full-scale drinking water plant online, including treatment plants for Superfund sites, is generally 60-90 days. The required one-year Pilot Study already covers the seasonal water quality variations in source water. The primary goal of commissioning time for full-scale is to prove the equipment is functioning as designed as the treatment has already been validated in the pilot. In addition, not applying this very expensive highly treated water to the best beneficial use would be a poor public message especially considering the drought and shortage conditions.

Comment 79: Local Government

We understand that counties will not be delegated authority with regard to the AWP program and that this separation is clear with regard to future AWTF facilities. Based on the response to Draft Rule Comment #136, we understand that WRFs that deliver treated wastewater to AWP facilities may be subject to future delegation agreements. Based on the response to Draft Rule Comment #123, it is not clear from the proposed rules whether existing, nor proposed drinking water treatment facilities that receive AWP treated water would remain delegated to certain Arizona counties or be addressed in a future delegation agreement. Based on the response to Draft Rule Comment #103, AWPRA facilities deemed part of a PWS and are defined as a DWTF in the proposed rules may remain delegated or will be addressed in a future delegation agreement.

Comment 80: Local Government

We are in full support of the definition of "Treatment Barrier" as proposed. Our understanding is that current definition, if applied to a UV/AOP process, would require constant operation at the design dose in order to receive credit for contaminant removal. It is our further understanding that vendor algorithms or features that enable power reduction based on flow rate or contaminant concentration or surrogates such as UV transmittance or TOC would not meet this definition, and that this type of feature is inappropriate to meet the concept of a constant operation. The unacceptability of this vendor promoted feature should be addressed in rule and/or a guidance document. The response to Draft Rule Comment #77 indicated that R18-9-C816(G)(4) was modified to that end - thank you. However, this response does not fully address the issue. UV/AOP processes operating at less than full power will be in constant operation but will not produce maximum pathogen LRV or design levels of chemical contaminant removal. How will ADEQ assign treatment performance credits to UV/AOP when systems are operated at less than full power and when contaminant destruction rate constants are kept proprietary?

Comment 81: Local Government

We understand that seven (7) guidance documents pertaining to design, implementation and maintenance of AWP systems

are being prepared. We request that stakeholders and the public be allowed to comment on these guidance documents. It is not clear whether guidance documents will have additional process criteria. Minimum requirements need to be established in rule. Based on the proposed rules, there is a great need for additional and specific design criteria. The proposed rules are silent on unit process redundancy and reliability requirements. The public would benefit from published unit process criteria for each type of treatment plant situation; raw water augmentation, treated water augmentation, entry into finished water reservoirs (if permissible), scalping scenarios, etc.

Comment 82: Local Government

Previously, we commented that the AWP annual report in R18-9-E831 should be attached to the Public Water System Consumer Confidence Report (CCR). The response to Draft Rule Comment #128 indicated that a change to the proposed rules was unnecessary and that CCR requirements require "all these components to be included". We are requesting that clarity be added to the proposed rules since all that would be required is for someone to report "treated wastewater", or AWP product water as a source. Specifically, the public reporting requirement should say more than "an AWP source is being introduced". Ideally, the constituents analyzed for and constituents remaining should be reported for the AWP product water regardless if introduced as a source, or introduced to an existing DWTF finished water reservoir, or introduced directly to a distribution system. Each AWPRA agency member should be required to publicly report since the AWPRA agency is not a public water system subject to SDWA requirements.

Comment 83: Local Government

The requirement to have three diverse and separate treatment processes, including AOP and one (undefined) physical separation process, is presented in rule at R18-9-F832(C). Please identify the physical separation processes that would satisfy this requirement.

Comment 84: Local Government

Consider adding a requirement under the Minimum Design Requirements rule (R18-9-F832(D)(5)) that destruction rate constants specific to the reactor being proposed are documented in the AOP validation report. Without such reporting, it is not possible for a regulatory oversight agency to properly evaluate an AOP process for conditions other than that of the test conditions.

Comment 85: Local Government

R18-9-F832(D)(9)(d), pertaining to SCADA communications, appears out of place and is not related to subsections (9)(a), (9)(b), or (9)(c), which pertain to cross connection control.

Comment 86: Local Government

Total Organic Carbon (TOC) Management: R18-9-F834 proposes two approaches for management of TOC in AWTF product water and appear to establish a TOC limit of 2 mg/L or a site-specific value to control unregulated candidate (CCL5) disinfection by-products but makes no specific mention of whether compliance with existing DBP regulations is required. Assuming that compliance with all current and future DBP regulations is required, this approach seems to create less stringent alternatives to the conventional DWTF approach that TOC and other constituents must be removed (to an appropriate degree) so that all applicable current and future DBP regulations are complied with to the degree necessary for the water ages occurring.

a. Please confirm that DWTFs receiving Advanced Treated Water (ATW) as a source (raw water augmentation) would still need to demonstrate TOC reduction (for any combination of sources) to comply with the Stage 1 DBP rule in the SDWA that requires 15% to 50% TOC reduction, depending on alkalinity.

b. Please confirm that DWTFs receiving ATW into an existing finished water reservoir are exempt from TOC reduction requirements of the stage 1 DBP rules but must still comply with Stage 2 and future DBP regulations.

c. Please confirm that AWTFs contributing "finished water" directly to the distribution system (treated water augmentation) are allowed to have TOC levels at any concentration that does not cause DBP non-compliance, current or future, in the distribution system.

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;

49-211. Direct potable reuse of treated wastewater; fees; rules

A. On or before December 31, 2024, the director shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater 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.

B. On or before December 31, 2024, the director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process.

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.

49-201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Aquifer" means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

3. "Best management practices" means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.

4. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

5. "Clean closure" means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.

6. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended.

7. "Closed facility" means:

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.

(b) A facility that has been approved as a clean closure by the director.

(c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.

8. "Concentrated animal feeding operation" means an animal feeding operation that meets the criteria prescribed in 40 Code of Federal Regulations part 122, appendix B for determining a concentrated animal feeding operation for purposes of 40 Code of Federal Regulations sections 122.23 and 122.24, appendix C.

9. "Department" means the department of environmental quality.

10. "Direct reuse" means the beneficial use of reclaimed water for specific purposes authorized pursuant to section 49-203, subsection A, paragraph 7.

11. "Director" means the director of environmental quality or the director's designee.

12. "Discharge" means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

13. "Discharge impact area" means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.

14. "Discharge limitation" means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.

15. "Effluent-dependent water" 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.

16. "Environment" means WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.

17. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.

18. "Existing facility" means a facility on which construction began before August 13, 1986 and that is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

19. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

20. "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.

21. "Hazardous substance" means:

(a) Any substance designated pursuant to sections 311(b)(2)(A) and 307(a) of the clean water act.

(b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.

(c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.

(d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).

(e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).

(f) Any substance that the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

22. "Inert material" means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

23. "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.

24. "Major modification" means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:

(a) A modification to a groundwater protection permit facility as defined in section 49-241.01, subsection C that would qualify for an area-wide permit pursuant to section 49-243 consisting of an activity or structure listed in section 49-241, subsection B shall not constitute a major modification solely because of that listing.

(b) For a groundwater protection permit facility as defined in section 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in section 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in section 49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

25. "New facility" means a previously closed facility that resumes operation or a facility on which construction was begun after August 13, 1986 on a site at which no other facility is located or to totally replace the process or production equipment that causes the discharge from an existing facility. A major modification to an existing facility is deemed a new facility to the extent that the criteria in section 49-243, subsection B, paragraph 1 can be practicably applied to such modification. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

26. "Nonpoint source" means any conveyance that is not a point source from which pollutants are or may be discharged to WOTUS.

27. "Non-WOTUS protected surface water" means a protected surface water that is not a WOTUS.

28. "Non-WOTUS waters of the state" means waters of the state that are not WOTUS.

29. "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.

30. "Ordinary high watermark" means the line on the shore of an intermittent or perennial protected surface water established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the channel, floodplain and riparian area.

31. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.

32. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. For the purposes of regulating non-WOTUS protected surface waters, a permit shall not include provisions governing the construction, operation or modification of a facility except as necessary for the purpose of ensuring that a discharge meets water quality-related effluent limitations or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.

33. "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.

34. "Point source" means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to WOTUS or protected surface water. Point source does not include return flows from irrigated agriculture.

35. "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 substances.

36. "Postclosure monitoring and maintenance" means those activities that are conducted after closure notification and that are necessary to:

(a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under section 49-243, subsection B, paragraph 3.

(b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.

(c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.

(d) Meet property use restrictions.

37. "Practicably" means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in section 49-243, subsection I, economically achievable on an industry-wide basis.

38. "Protected surface waters" means waters of the state listed on the protected surface waters list under section 49-221, subsection G and all WOTUS.

39. "Public waters" means waters of the state open to or managed for use by members of the general public.

40. "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.

41. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.

42. "Regulated agricultural activity" means the application of nitrogen fertilizer or a concentrated animal feeding operation.

43. "Safe drinking water act" means the federal safe drinking water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

44. "Standards" means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.

45. "Standards of performance" means performance standards, design standards, best management practices, technologically based standards and other standards, limitations or restrictions established by the director by rule or by permit condition.

46. "Tank" means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

47. "Toxic pollutant" means a substance that will cause significant adverse reactions if ingested in drinking water. Significant adverse reactions are reactions that may indicate a tendency of a substance or mixture to cause long lasting or irreversible damage to human health.

48. "Trade secret" means information to which all of the following apply:

(a) A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.

(b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

(c) No statute specifically requires disclosure of the information to the public.

(d) The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

49. "Vadose zone" means the zone between the ground surface and any aquifer.

50. "Waters of the state" means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.

51. "Well" means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.

52. "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 under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

53. "WOTUS" means waters of the state that are also navigable waters as defined by section 502(7) of the clean water act.

54. "WOTUS protected surface water" means a protected surface water that is a WOTUS.

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.

49-203. 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.

49-241. 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.

49-241.01. Groundwater protection permit facilities; schedule; definition

A. The director shall complete the issuance or denial of aquifer protection permits or clean closure approval for all groundwater protection permit facilities on the following schedule:

1. By January 1, 2004, for all groundwater protection permits for nonmining facilities.

2. By January 1, 2006, for all groundwater protection permits for mining facilities.

B. The failure by the director to issue or deny an aquifer protection permit for a groundwater protection permit facility within the time prescribed by this section does not excuse a person from continuing to comply with all statutory and regulatory requirements applicable to that person's facility.

C. For purposes of this section, "groundwater protection permit facility" means either of the following:

1. A facility for which a groundwater quality protection permit was issued pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

2. A facility for which a notice of disposal was filed pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

49-241.02. Aquifer protection permit program fees

A. The department shall adopt by rule fees to pay the expenses incurred in implementing the aquifer protection permit 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.

B. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

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.

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2. A description of how the facility will be operated.

3. Existing and proposed pollutant control measures.

4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5. The use of water from aquifers in the discharge impact area.

6. The existing quality of the water in the aquifers in the discharge impact area.

7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.

9. Any other relevant federal or state permits issued to the applicant.

10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological

or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).

3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1. Monitoring requirements.

2. Record keeping and reporting requirements.

3. Contingency plan requirements.

4. Discharge limitations.

5. Compliance schedule requirements.

6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.

7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.

8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.

2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:

1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.

2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial responsibility by means of a self-assurance or

guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.

3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.

B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.

C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:

1. The petition identifies the class of facilities for which rule adoption is requested.

2. The petition includes a description of the presumptive controls for the requested class of facilities.

3. The petition complies with section 41-1033.

4. The class of facilities described in the petition satisfies subsection A of this section.

D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.

2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:

(a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.

(b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:

(i) The property boundary.

(ii) Any point of an existing or reasonably foreseeable future drinking water source.

(iii) Seven hundred fifty feet from the edge of the pollutant management area.

3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

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.

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act or article 3.1 of this chapter, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for these types of permits for any storm water discharges at the facility.

2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.

3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:

1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are inventoried pursuant to the underground injection control program under either:

(i) State rules approved by the United States environmental protection agency pursuant to 42 United States Code section 300h.

(ii) Federal regulations adopted by the United States environmental protection agency pursuant to 42 United States Code section 300h.

(b) The discharge occurs only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after the inventory made pursuant to subdivision (a) of this paragraph.

(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.

(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.

(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.

(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to protected surface waters from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.

(b) The discharges occur only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:

1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.

2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.

3. On issuing a general permit containing best management practices, make a reasonable ef fort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:

1. On-site facilities for urban runoff.

2. Storm sewers.

3. Urban runoff.

4. Silvicultural activities.

5. Septic tanksystems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:

1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.

2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule, pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a designated region if the director determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices.

D. In adopting agricultural best management practices, the director shall consider:

1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.

2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing, determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article.

49-249. Aqifer polltion information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director, by rule, may exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from the facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.

2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.

3. The noncommercial use of consumer products generally available to and used by the public.

4. Ponds used for watering livestock and wildlife.

5. Mining overburden returned to the excavation site, including any common material that has been excavated and removed from the excavation site and that has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 7 for beneficial use.

7. Discharge to a community sewer system.

8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act or article 3.1 of this chapter.

11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.

12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.

13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.

14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.

15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.

16. Discharges to a facility that is exempt pursuant to paragraph 6 of this subsection if those discharges are regulated pursuant to 33 United States Code section 1342 or article 3.1 of this chapter.

17. Solid waste and special waste facilities if rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall apply only if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.

18. Facilities used in:

(a) 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.

(b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.

(c) Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions that have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.

20. Storage, treatment or disposal of inert material.

21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.

22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.

23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:

(a) Firefighting system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

(e) Pavement wash water if no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

(f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.

(g) Foundation or footing drains in which flows are not contaminated with process materials.

(h) Occupational safety and health administration or mining safety and health administration safety equipment.

24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.

26. Except for class V wells that are operating as prescribed by rules adopted pursuant to article 3.3 of this chapter or 42 United States Code section 300h-1(c), any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United States Code section 300h-1(c).

27. Coal combustion residuals units that are regulated under 40 Code of Federal Regulations part 257, subpart D or by a permit in effect under the coal combustion residuals program established pursuant to chapter 4, article 11 of this title and approved by the United States environmental protection agency as prescribed by 42 United State Code section 6945(d)(1).

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:

1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.

2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:

(a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.

(b) The breakdown or upset will be corrected in a reasonable period of time.

3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:

1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.

2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of workjustifying a schedule for collecting the technical information necessary to apply.

D-3.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 1

Amend: Table 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 1

Amend: Table 10

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend one (1) table in Title 18, Chapter 1, Article 5 regarding Licensing Time-Frames. Specifically, the Department is amending Table 10 related to Water Permit Licensing Time-Frames to include the Licensing Time-Frame (LTF) requirements for the new Advanced Water Purification (AWP) program.

Pursuant to A.R.S. § 49-211, the Legislature mandated the Department "adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process". With this rulemaking the Department is setting the LTFs for the new AWP program. The Department indicates, generally, the LTFs for the AWP program's license issuances are based on LTFs currently in place for the Aquifer Protection Permits. The Department indicates it anticipates that all AWP permit applications will be significantly complicated, necessitating a lengthy review and processing time period. Like the Complex Individual Aquifer Protection Permit LTFs, the Department establishes for the two AWP permits and the Significant AWP Amendment ("Permit", "Demonstration Permit" and "Significant Amendment"), 35 days for the

administrative completeness review and 249 days for the substantive review. This makes the overall time frame 284 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 294 days for the substantive review and 329 days overall. Additionally, the Department establishes LTFs for a Significant Amendment to an AWP Demonstration Permit and a Permit Renewal ("Demonstration Permit Significant Amendment" and "Permit Renewal") to be the same as an Individual Aquifer Protection Permit Significant Amendment: 35 days for the administrative completeness review and 186 days for the substantive review. This makes the overall time frame 221 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 231 and 266 days, respectively. Lastly, the Department establishes for a Minor Amendment ("Minor Amendment") LTFs that mirror the APP "Other Amendments": 35 days for the administrative completeness review and 100 days for the substantive review. This makes the overall time frame 135 days. Like APP "Other Amendments", no public hearing is required for AWP Minor Amendment. The Department states it has determined these LTFs provide a reasonable time period for processing such applications.

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

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

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

The Department indicates, while this rulemaking package does not contain a new fee or fee increase, other rulemakings related to implementation of the AWP program do contain new fees as authorized by A.R.S. § 41-211(A).

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 adopting the AWP regulatory program pursuant to statutory mandate at A.R.S. § 49-211. According to the Department, the program offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

The entities with the largest expected impact as a result of the AWP program are the Arizona Water Provider Agencies (WPAs). This impact is specific to capital costs, operations/maintenance costs, and permitting/compliance costs. Fundamentally, the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency as they determine what technology is best to address their operations.

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 the responsibility for evaluating less costly or intrusive alternatives falls on potential program participants rather than the Department itself. Because participation in the AWP program is voluntary, each WPA is expected to assess whether AWP is the best option for its specific needs or if alternative water supply methods, such as brackish groundwater reverse osmosis (BWRO), would be more cost-effective. While BWRO is considered a primary alternative, it is generally more expensive and comes with its own programmatic framework rather than mandating specific projects, the cost-effectiveness and burden of implementation ultimately rest with each WPA, ensuring that those who choose to participate do so based on a careful evaluation of costs and benefits.

6. What are the economic impacts on stakeholders?

Stakeholders are identified as: the Department, WPAs, Municipal governments, WPA customers, the general public, and the Arizona environment.

The Department will incur costs for hiring staff to oversee the program, but these will be offset through application and annual fees. WPAs face the most significant costs, including capital investments, compliance, and ongoing operations. However, participation is voluntary, and financial barriers may decrease over time. Estimated capital costs for AWP projects range from $208 million to $276 million, with annual maintenance costs between $3.3 million and $10.9 million.

Municipal governments may be impacted given their relationship to the WPAs in their communities. WPA customers may see higher rates but, along with the general public, will benefit from increased water availability. The environment benefits from reduced groundwater reliance.

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 November 1, 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 no 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 indicates this rulemaking establishes the AWP regulatory program, which includes issuing individual permits, pursuant to A.R.S. § 49-211. The Department states, while the product (advanced treated water or finished water) of an AWP regulatory program facility is substantially the same, the facilities, activities and practices regulated by the program will be substantially different in nature due to the treated wastewater source, a multitude of viable technological process configurations, a swift pace of technological progress in the field, and the custom nature of the regulated parties and their circumstances. As such, the Department indicates general permits are not "technically feasible" for the AWP regulatory program under A.R.S. § 41-1037(A)(3), and not used in the program. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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, while the Safe Drinking Water Act (SDWA) (40 USC § 300f *et seq*.) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (*see* R18-9-A801) as a source, which is the subject of this final rule. The Department states, SDWA

only contemplates surface and ground water as sources for public water systems. The Department indicates some AWP facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

11. Conclusion

This regular rulemaking from the Department seeks to amend one (1) table in Title 18, Chapter 1, Article 5 regarding Licensing Time-Frames. Specifically, the Department is amending Table 10 related to Water Permit Licensing Time-Frames to include the Licensing Time-Frame requirements for the new AWP program.

The Department is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) to "avoid a violation of…state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." A.R.S. § 49-211 requires the Department to, "[o]n or before December 31, 2024...adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." The Department indicates, while an immediate effective date will not avoid a violation of A.R.S. § 49-211, it serves to ameliorate the extent of the violation by establishing an effective date as close in time as possible to the statutory deadline "on or before December 31, 2024". The Department indicates the Legislature charged it with the adoption of an advanced water purification program in Fall 2022, setting a justifiably aggressive deadline of December 31, 2024. Since that time, the Department indicates it has diligently undertaken an extensive program design and rule-writing approach to appropriately design the revolutionary program. Additionally, the Department indicates it conducted a special stakeholder approach commensurate with the intricacies of the program, itself, with myriad stakeholder efforts. The Department stated this process included engagement at all phases of the project, in the program framework and guiding principle development phase to the draft rule phase, and included multiple opportunities for the Department to work with and educate stakeholders, receive feedback on program components, and improve the program. The Department states, while it worked aggressively to achieve the statutory deadline, best efforts nevertheless fell a few months short. As such, the Department indicates it did not delay or fail to act in such a way that led to the need for an immediate effective date. Council staff believes the Department has provided adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2).

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

January 16, 2025

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Advanced Water Purification (AWP) Regular Rulemaking: Title 18, Environmental Quality, Chapters 1, 5, 9, and 14

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 March 4th, 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. R1-6-201:

I. Information required under A.A.C. R1-6-201(A)(1):

(A)(1)(a) The public record closed for all rules on December 2nd, 2024 at 11:59 p.m.
(A)(1)(b) The rulemaking activity does not relate to a five-year review report.
(A)(1)(c) The rulemaking activity does establish a new fee; please see A.R.S. § 49-211(A) for authority.
(A)(1)(d) The rulemaking does not contain a fee increase as the AWP Program is being established for the first time and has no appropriately comparable precedent in state or Federal law.
(A)(1)(e) An immediate effective date is requested.
(A)(1)(f) 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 (*see* subheading III, below).
(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S.

§ 41-1055(B)(3)(a) (*see* subheading III, below).

(A)(1)(h) A list of documents is enclosed (*see* subheading III, below).

II. Information required under A.A.C. R1-6-201(A)(2) through (8):

(A)(2) Four (4) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading III, below);

(A)(3) The preambles contain an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055 (*see* subheading III, below);

(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading III, below);

(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;

(A)(6) Materials were incorporated by reference in this rulemaking (*see* subheading III, below);

(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading III, below);

(A)(8) A list of statutes or other rules referred to in the definitions (*see* subheading III, below).

III. List of documents enclosed (38 documents total)**:**

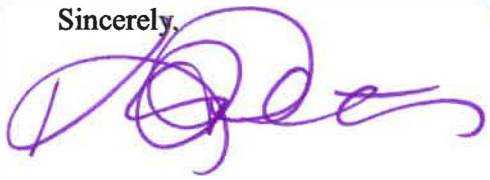
- One (1) Cover Letter (R1-6-201(A)(1));
  - AWP_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWP_JLBC.pdf
- Four (4) NFRMs (R1-6-201(A)(2));
  - AWP_NFRM_18_AAC_1.pdf
  - AWP_NFRM_18_AAC_5.pdf
  - AWP_NFRM_18_AAC_9.pdf
  - AWP_NFRM_18_AAC_14.pdf
- Four (4) EISs (R1-6-201(A)(3));
  - AWP_EIS_18_AAC_1.pdf
  - AWP_EIS_18_AAC_5.pdf
  - AWP_EIS_18_AAC_9.pdf
  - AWP_EIS_18_AAC_14.pdf
- Four (4) Public Comments Received Documents (R1-6-201(A)(4));
  - AWP_Cmts_18_AAC_1.pdf
  - AWP_Cmts_18_AAC_5.pdf
  - AWP_Cmts_18_AAC_9.pdf
  - AWP_Cmts_18_AAC_14.pdf

- Thirteen (13) Materials Incorporated by Reference (R1-6-201(A)(6));
  - "Method 5710B"
    - R18-9-A802(B)(1); R18-9-F834(C)(2)(b)(v)
    - SM_5710.pdf
  - "Method 5710C"
    - R18-9-A802(B)(2); R18-9-F834(C)(2)(a) & (b)
    - SM_5710.pdf
  - "Analytical and Data Quality Systems"
    - R18-9-A802(B)(3); R18-9-A802(C)(1)
    - 2018-1000-Analytical-and-Data-Quality-Systems.pdf
  - Quality System"
    - R18-9-A802(B)(4); R18-9-A802(C)(2)
    - SM_7020.pdf
  - "Quality Assurance and Quality Control in Laboratory Toxicity Tests"
    - R18-9-A802(B)(5); R18-9-A802(C)(3)
    - SM_8020.pdf
  - "Quality Assurance/Quality Control"
    - R18-9-A802(B)(6); R18-9-A802(C)(4)
    - SM_9020.pdf
  - "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices"
    - R18-9-A802(B)(7); R18-9-F832(C)(4)
    - ASTM-D4194-23.pdf
  - "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5"
    - R18-9-A802(B)(8); R18-9-F834(C)(2)(c)(i) & (ii)
    - CCL5_DBPs_87_FR_68066.pdf
  - "2018 Edition of the Drinking Water Standards and Health Advisories"
    - R18-9-A802(B)(9); R18-9-E826(D)(4), (5), (6) & (7); R1 8-9-F834(C)(2)(c)(ii)
    - HA_Table - 2018.pdf
  - "Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA"
    - R18-9-A802(B)(11); R18-9-E828(C)(9)
    - EPA Method 1623.1.pdf
  - "Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR"
    - R18-9-A802(B)(12); R18-9-E828(C)(9)
    - EPA Method 1615.pdf
  - "Characteristic of ignitability"
    - R18-9-A802(B)(13); R18-9-E824(B)(13)(a)

        - 40 CFR 261.21.pdf
    - "Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility"
        - R18-9-A802(B)(14); R18-9-F832(D)(4)(b)(viii)
        - Consideration_DPR_Downstream.pdf
- General and Specific Authorizing Statutes (R1-6-201(A)(7));
    - 49-104 - Powers and duties of the department and director.pdf
    - 49-203 - Powers and duties of the director and department.pdf
    - 49-211 - Direct potable reuse of treated wastewater; fees; rules.pdf
- Statutes or Rules Referred to in the Definitions (R1-6-201(A)(8));
    - R1_6_201_A_8.pdf
        - 40_CFR_141_201.pdf
        - 40_CFR_Part_141 - 7_1_23.pdf
        - 42_USC_300f_et_seq.pdf
        - 49-201 - Definitions.pdf
        - 49-203 - Powers and duties of the director and department.pdf
        - AAC_Title_18_Chptr_9_Arts_1_2_3.pdf
        - ARS_Title 49 _Chpt_2_ Art_3.pdf
- A.R.S. § 41-1039(B) Governor's Approval
    - WATER Direct Potable Reuse 2nd APPROVAL.pdf

Thank you for your timely review and approval. Please contact Jon Rezabek or Natalie Kilker, Legal Specialists, Water Quality Division, 602-771-8219, 602-771-0358 or rezabek.jon@azdeq.gov, kilker.natalie@azdeq.gov if you have any questions.

Sincerely,



Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

PREAMBLE

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

August 28, 2024

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

Table 10 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), (7); 49-203(A)(7), (9), (10)

Implementing statute: A.R.S. § 49-211

4. The effective date of the rule:

This rule shall become effective immediately after a certified original of the rule and preamble are filed with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is March 4, 2025.

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):

The rule shall be effective on March 4, 2025. ADEQ selected this date pursuant to A.R.S. § 41-1032(A)(2) in order "to avoid a violation of … state law, if the need for an immediate effective date is not created due to the agency's delay or inaction".

A.R.S. § 49-211 requires ADEQ to, "[o]n or before December 31, 2024 … adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program [A.K.A. - AWP regulatory program], including rules establishing permitting standards and a permit application process."

While an immediate effective date will not avoid a violation of A.R.S. § 49-211, it serves to ameliorate the extent of the violation by establishing an effective date as close in time as possible to the statutory deadline "on or before December 31, 2024". The Legislature charged ADEQ with the adoption of an advanced water purification program in Fall 2022, setting a justifiably aggressive deadline of December 31, 2024. Since that time, ADEQ diligently undertook an extensive program design and rule-writing approach to appropriately design the revolutionary program. Additionally, ADEQ conducted a special stakeholder approach commensurate with the intricacies of the program, itself, with myriad stakeholder efforts outlined in Section 7 of this Notice of Final Rulemaking. This process included engagement at all phases of the project, in the program framework and guiding principle development phase to the draft rule phase, and included multiple opportunities

for ADEQ to work with and educate stakeholders, receive feedback on program components, and improve the program. Arizona is one of only a handful of states with a regulatory framework for advanced water purification, and the process was, therefore, carefully conducted to best preserve the interests of the Legislature and the health of Arizonans. While ADEQ worked just as aggressively to achieve the statutory deadline, best efforts nevertheless fell a few months short. For these reasons and pursuant to A.R.S. § 41-1032(A)(2), ADEQ did not delay or fail to act in such a way that led to the need for an immediate effective date.

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 Proposed Rulemaking: 30 A.A.R. 3185, Issue Date: November 1, 2024, Issue Number: 44, File Number: R24-209.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2876, Issue Date: September 20, 2024, Issue Number: 38, File Number: R24, 175.

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

Name: Jon Rezabek
Natalie Kilker
Title: Legal Specialists
Division: Water Quality
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-8219
Fax: (602) 771-2366
Email: reuserulemaking@azdeq.gov
Website: https://www.azdeq.gov/awp-rulemaking

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

***Introduction*:**

The Arizona Department of Environmental Quality ("ADEQ") is mandated by the Arizona Legislature, pursuant to Arizona Revised Statutes (A.R.S.) § 49-211, to "adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater

program, including rules establishing permitting standards and a permit application process". The statute, adopted from House Bill 2861, as enacted in the Second Regular Session on June 28, 2022, became effective on September 24, 2022. For purposes of this Notice and the final rule, the term "direct potable reuse" is synonymous with "Advanced Water Purification" (or "AWP"), as the program is now called.

ADEQ, in consideration of Arizona's water supply needs and the Legislative mandate, interpreted A.R.S. § 49-211 as a call to establish an AWP program that is both protective of human health and the environment, as well as imposing minimum burden upon the stakeholder community in achieving that goal. The result of that effort is detailed in the final rules to be placed in the Arizona Administrative Code (A.A.C.), Title 18, Chapters 1, 5, 9 and 14, through this Notice of Final Rulemaking (NFRM) and through the simultaneously filed associated NFRMs.

***Background*:**

Arizona faces significant water supply challenges requiring proactive approaches to conservation and stewardship, in anticipation of decreased water availability in the future. Arizona is currently experiencing a severe and sustained drought, persisting since 1994. The state has experienced an average annual precipitation of approximately 12 inches, and climate data reveals a concerning trend: a consistent reduction of 0.9 inches of rainfall per year over the past three decades (Arizona State University, 2023, Climate of Arizona, https://azclimate.asu.edu/climate/). As a result of the continuing mega-drought, a Drought Emergency Declaration has existed since 1999. The impacts can be felt heavily in the rural areas of the state, where alternative water supplies are generally very limited and the economy is strongly affected by drought (e.g., grazing, irrigated agriculture, recreation, forestry). Most of rural Arizona relies exclusively on groundwater as its primary water source and lacks the groundwater regulations and conservation requirements which have been present in the state's active management areas (AMAs) and irrigation non-expansion areas (INAs).

In addition to the reduced precipitation within Arizona, the Colorado River Basin is also facing decades-long drought conditions, which have led to historically low water levels in Colorado River system reservoirs. As a result, Arizona has implemented measures to reduce its consumption of Colorado River water. The Lower Colorado River Basin first experienced a Tier 1 Shortage as agreed in the 2007 Interim Guidelines and the Drought Contingency Plan in 2021. In 2022, Bureau of Reclamation Commissioner Camille Touton called on the Colorado River states to conserve between 2-4 million acre feet per year to address the critically low levels in Lake Powell and Lake Mead following a dire water year. Fortunately, voluntary reductions in the Lower Basin and a healthy water year 2022 averted a decline to critically low elevations. However, as the Basin States look ahead, climate projections and historical trends indicate that the Basin is likely to face increasing average temperatures and reduced precipitation in the coming years. Arizonans will likely be called upon to live with further reduced Colorado River supplies for the foreseeable future as the next set of operational guidelines for the Colorado River are finalized.

Beyond the shrinking water supply, economic growth presents water providers with formidable challenges in meeting demand. As water-intensive industries relocate to Arizona, industrial water demands may increase. Furthermore, there may be challenges with maintaining the necessary housing growth due to the release of the new models of groundwater conditions in the Phoenix and Pinal

AMAs. The results of the groundwater flow model projections show that over a period of 100 years, the Phoenix AMA will experience 4.86 million acre-feet (maf) of unmet demand for groundwater supplies and the Pinal AMA will experience 8.1 maf of unmet demand for groundwater supplies, given current conditions. In keeping with these findings of unmet demand, the State will not approve new determinations of Assured Water Supply within the Phoenix and Pinal AMAs based on groundwater supplies. This will lead to an increased competition for limited alternative water supplies. As growth continues, there will be an increasing need for sustainable and innovative water resource management strategies to accommodate the state's evolving needs.

***What is AWP*?**

Advanced Water Purification (AWP) is defined as the treatment and distribution of a municipal wastewater stream for use as potable water without the use or with limited use of an environmental buffer (US EPA, 2017, Potable Reuse Compendium). AWP has been shown to be a safe and effective source of potable water over decades of implementation in projects that have been installed worldwide at facilities in Big Spring, Texas (2013); Wichita Falls, Texas (2014); Namibia (1968 and 2002); Singapore (2019); and South Africa (2011) (Lahnsteiner, J., Van Rensburg, P., & Esterhuizen, J., 2018, Direct potable reuse–a feasible water management option. Journal of Water Reuse and Desalination, 8(1), 14-28).

AWP applications typically consist of a conventional water reclamation facility (WRF) or wastewater treatment plant (WWTP) that performs solids, carbon, nutrient, and pathogen removal and an advanced water treatment facility (AWTF) that provides additional pathogen and trace chemical removal. An AWTF is a utility or treatment plant where recycled wastewater is treated to produce purified water to meet specific AWP requirements. AWTFs use a multi-barrier approach where several redundant unit processes in series are installed to treat WRF effluent to potable water standards. Depending on the site-specific infrastructure configuration and treatment capabilities, the AWTF effluent may be introduced into several different locations of the potable water treatment and distribution system to be reused: (i) in the intake to the existing drinking water treatment facility (DWTF); (ii) after the DWTF and prior to the potable water distribution system; or (iii) Directly into the potable water distribution system.

***Evolution of AWP in Regulations*:**

A predecessor to the AWP program was adopted in the A.A.C. in 2018 at R18-9-E701, including a definition of "[a]dvanced reclaimed water treatment facility" at R18-9-A701(1). An associated NFRM filed simultaneously with this NFRM will repeal these rules in their entirety to make way for the AWP program. This prior, less detailed, single-ruled program was placed in Title 18, Chapter 9, Article 7 of the A.A.C. Article 7 is entitled "Use of Recycled Water". Part E of Article 7 was entitled "Purified Water for Potable Use" and R18-9-E701 was entitled "Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility". R18-9-E701 detailed basic requirements for an advanced reclaimed water treatment facility and, during the rule's tenure, was used to permit one such facility. The facility was not authorized to, and did not, distribute purified water as drinking water through established conveyances or networks. As was stated above, in recent years, the Arizona Legislature determined a need for a more robust regulatory program for AWP. The Legislature passed House Bill 2861 into law in 2022, effectuating statute A.R.S. § 49-211, which led directly to the establishment of the final AWP program and the repeal of the previous program.

***Associated Rulemakings*:**

This final rulemaking includes four NFRMs, adding, repealing or amending rules in A.A.C. Title 18. Environmental Quality:

- Chapter 1 (Department of Environmental Quality - Administration),
- Chapter 5 (Department of Environmental Quality - Environmental Reviews and Certification),
- Chapter 9 (Department of Environmental Quality - Water Pollution Control), and
- Chapter 14 (Department of Environmental Quality - Permit and Compliance Fees).

The final changes to Chapter 1 are specific to updating the Licensing Time-Frame requirements in Article 5 to account for the new AWP program. The final changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The final additions, amendments and repeals to Chapter 9 are all aimed at making way for and establishing the AWP regulatory program. The final changes to Chapter 14 are specific to updating the Water Quality fees in Article 1 to accommodate the AWP program commensurate with other water quality programs.

***Choosing LTFs for the AWP Program*:**

Generally, the LTFs that are final for the AWP program's license issuances are based on LTFs currently in place for the Aquifer Protection Permits (*See* Table 10. Water Permit Licensing Time-frames). ADEQ anticipates that all AWP permit applications will be significantly complicated, necessitating a lengthy review and processing time period. Like the Complex Individual Aquifer Protection Permit LTFs (*See* Table 10. Water Permit Licensing Time-frames), ADEQ establishes for the two AWP permits and the Significant AWP Amendment ("Permit", "Demonstration Permit" and "Significant Amendment"), 35 days for the administrative completeness review and 249 days for the substantive review. This makes the overall time frame 284 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 294 days for the substantive review and 329 days overall. Additionally, ADEQ establishes LTFs for a Significant Amendment to an AWP Demonstration Permit and a Permit Renewal ("Demonstration Permit Significant Amendment" and "Permit Renewal") to be the same as an Individual Aquifer Protection Permit Significant Amendment: 35 days for the administrative completeness review and 186 days for the substantive review. This makes the overall time frame 221 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 231 and 266 days, respectively. Lastly, ADEQ establishes for a Minor Amendment ("Minor Amendment") LTFs that mirror the APP "Other Amendments": 35 days for the administrative completeness review and 100 days for the substantive review. This makes the overall time frame 135 days. Like APP "Other Amendments", no public hearing is required for AWP Minor Amendment. The Department has determined these LTFs provide a reasonable time period for processing such applications.

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:

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:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies

(WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough

detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);

- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program. This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. **Part I - Cost/Benefit Stakeholder Matrix:**

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).	Minimal	
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal

	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and

findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DPR regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into

a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific

AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for

instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

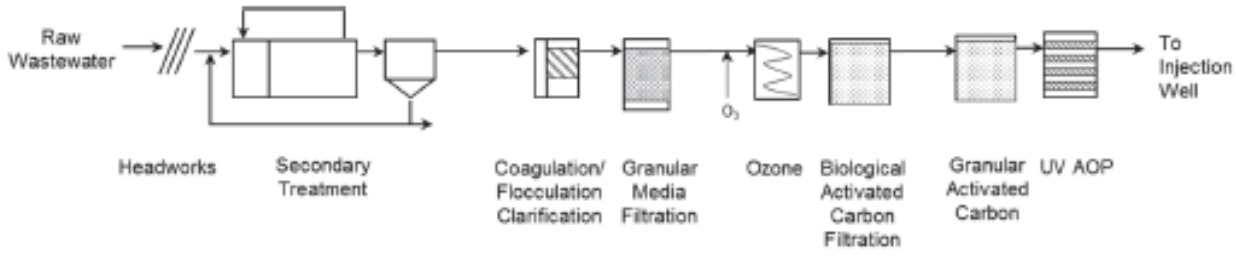
WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

WPA - Cost Evaluation - Project 1 Ozone-BAC:

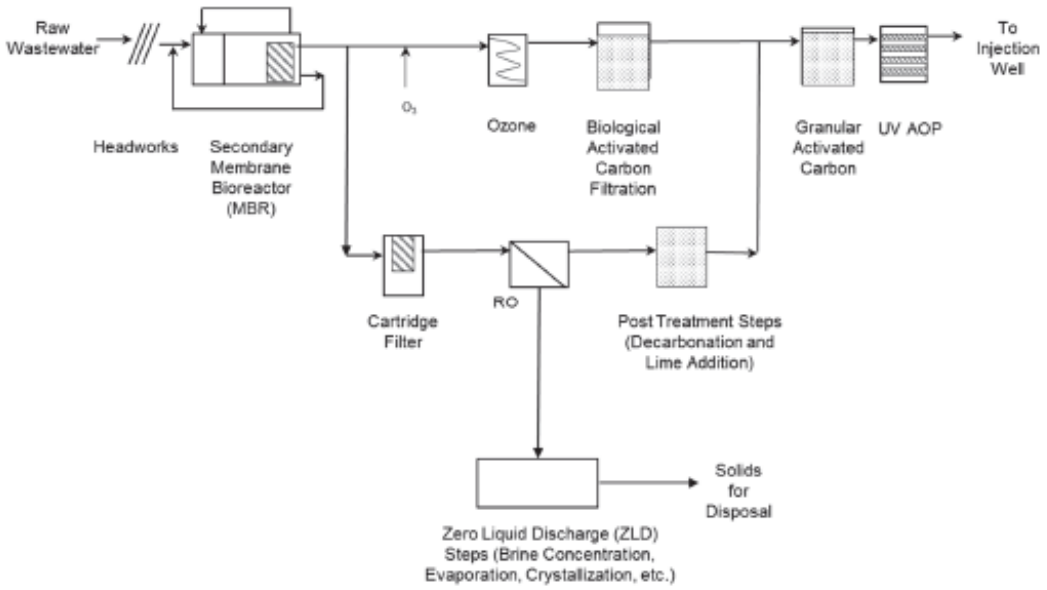
This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for

oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

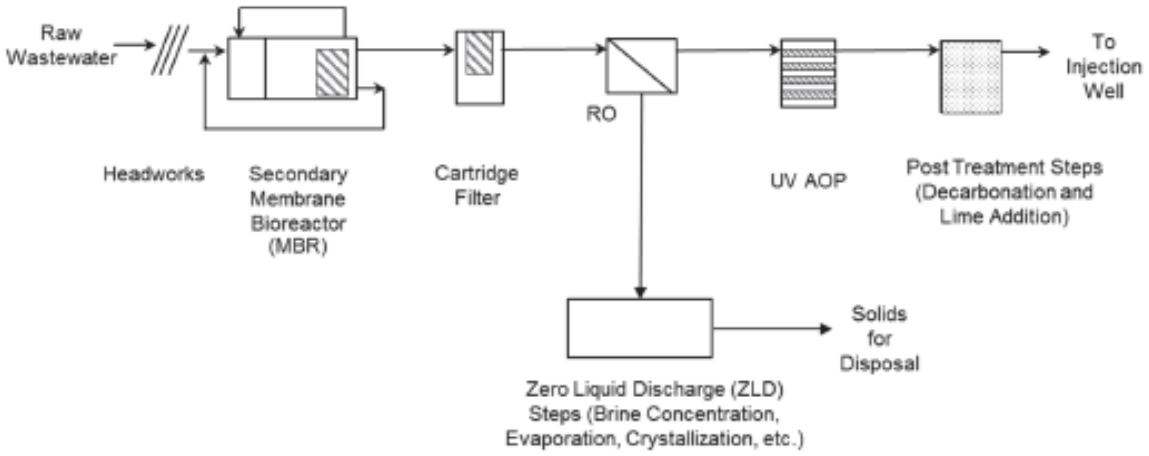
This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for

applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390
Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be

impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP development should allow

many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and

Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use

terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary

for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore,

in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water

supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program. As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs. ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and

implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

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

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:

There are no other matters prescribed by statute 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:

Yes, this rulemaking establishes the Advanced Water Purification regulatory program, which includes issuing individual permits, pursuant to A.R.S. § 49-211. While the product (advanced treated water or finished water) of an Advanced Water Purification regulatory program facility is substantially the same, the facilities, activities and practices regulated by the program will be substantially different in nature due to the treated wastewater source, a multitude of viable technological process configurations, a swift pace of technological progress in the field, and the custom nature of the regulated parties and their circumstances. Moreover, general permits are not "technically feasible" for the Advanced Water Purification regulatory program under A.R.S. § 41-1037(A)(3), and not used in the program.

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:

While the Safe Drinking Water Act (SDWA) (40 USC § 300f *et seq.*) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated

wastewater" (*see* R18-9-A801) as a source, which is the subject of this final rule. In fact, SDWA only contemplates surface and ground water as sources for public water systems. Some Advanced Water Purification facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

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.

14. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

ARTICLE 5. LICENSING TIME-FRAMES

Section

ARTICLE 5. LICENSING TIME-FRAMES

Table 10. Water Permit Licensing Time-Frames (Business Days)

Permits	Authority	Administrative Completeness Review	Substantive Review	Overall Time-Frame
AQUIFER PROTECTION PERMITS				
Individual Permit No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231[1]	221 266
Complex Individual Permit No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294[1]	284 329
Individual Permit **Significant Amendment** No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231[1]	221 266
Complex Individual Permit **Significant Amendment** No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294[1]	284 329
Individual Permit Other Amendment	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	100	135

Temporary Individual Permit	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	145	180
Type 3 General Permit	A.R.S. § 49-245 A.A.C. R18-9-D301 through R18-9-D307	21	60	81
4.01 General Permit 300 services or less More than 300 services	A.R.S. § 49-245 A.A.C. R18-9-E301	42 42	53 94	95[2] 136[2]
Standard Single 4.02, 4.03, 4.13, 4.14, 5.15, and 4.16 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302, R18-9-E303, R18-9-E313, R18-9-E314	42	31	73[2]
4.23 General Permit	A.R.S. § 49-245 A.A.C. R18-9-E323	42	94	136[2]
Standard Combined Two or three Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	53	95[2]
Complex Combined Four or more Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	94	136[2]
SUBDIVISION APPROVALS				
Subdivision Individual facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-408	21	46	67
Subdivision Community facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-403	21	37	58
RECLAIMED WATER PERMITS				
Individual Permit	A.R.S. § 49-203	35	186	221

No public hearing Public hearing	A.A.C. R18-9-702 through R18-9-707	35	231[1]	266
Complex Individual Permit No public hearing Public hearing	A.R.S. § 49-203 A.A.C. R18-9-702 through A.A.C. R18-9-707	35 35	249 294[1]	284 329
Type 3 General Permit	A.R.S. § 49-203 A.A.C. R18-9-717, R18-9-718, R18-9-719	21	60	81
ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES) PERMITS				
Individual Permit **Major Facility[5]** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	249 294[1]	284[3, 4] 329[3, 4]
Individual Permit **Minor Facility[6]** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231[1]	221[3, 4] 266[3, 4]
Individual Permit **Stormwater / Construction Activities** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	126 171[1]	161 206[3, 4]
Individual Permit **Major Modification** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231[1]	221[3, 4] 266[3, 4]
LAND APPLICATION OF BIOSOLIDS REGISTRATIONS				

Biosolids Applicator Registration **Request Acknowledgment**	A.R.S. § 49-255.03 A.A.C. R18-9-1004	15	0	15
UNDERGROUND INJECTION CONTROL PERMITS				
Area Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C624	35 35	249 294[1]	284 329
Class I Well Permit and **Modification** No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part E	35 35	249 294[1]	284 329
Class II Well Permit and **Modification** No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part F	35 35	186 231[1]	221 266
Class III Well Permit and **Modification** No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part G	35 35	186 231[1]	221 266
Class V Well Individual Permit **and Modification** No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part I	35 35	186 231[1]	221 266
Class VI Well Permit and **Modification** No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part J	35 35	249 294[1]	284 329
ADVANCED WATER PURIFICATION PERMITS				
Permit No public hearing	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35 35	249 294[1]	284 329

Public hearing				
Permit Renewal No public hearing Public hearing	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35 35	186 231[1]	221 266
Demonstration Permit No public hearing Public hearing	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35 35	249 294[1]	284 329
Significant Amendment No public hearing Public hearing	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35 35	249 294[1]	284 329
Minor Amendment	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35	100	135
Demonstration Permit **Significant Amendment** No public hearing Public hearing	A.R.S. §§ 49-211 18 A.A.C. 9, Article 8	35 35	186 231[1]	221 266

[1]A request for a public hearing allows the Department 60 days to publish the notice of public hearing and for the official comment period. Forty-five business days are added to the substantive review time-frame.

[2]Each request for an alternative design, installation, or operational feature under R18-9-A312(G) to a Type 4 General Permit adds eight business days to the substantive review time-frame.

[3]EPA reserves the right, under 40 CFR 123.44, to take 90 days to supply specific grounds for objection to a draft or proposed permit when a general objection is filed within the review period. The first 30 days run concurrently with the Department's official comment period. Forty-five business days will be added to the substantive review time-frame to allow for the EPA review.

[4]If a request for a variance is submitted to the Department, 40 CFR 124.62 requires that specific variances are subject to review by EPA. Under 40 CFR 123.44, EPA reserves the right to take 90-days to approve or deny the variance. Sixty-four business days will be added to the substantive review time-frame to allow for the EPA review.

[5]"Major facility" means any NPDES "facility or activity" classified as such by the EPA in conjunction with the Director.

[6]"Minor facility" means any facility that is not classified as a major facility.

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 1

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

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA

and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program.

This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative	Minimal	

	impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).		
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate

and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DRP regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general

requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

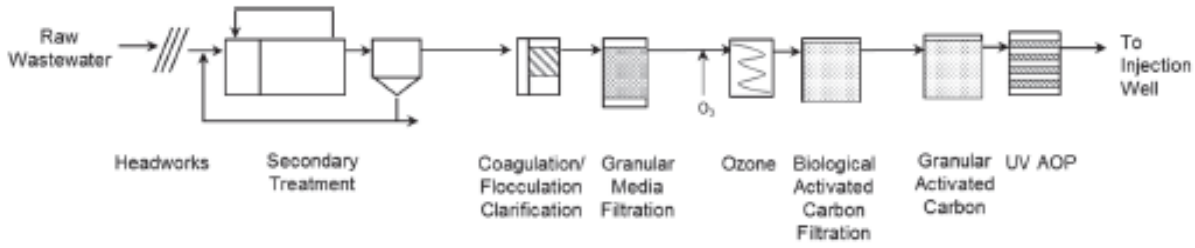
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

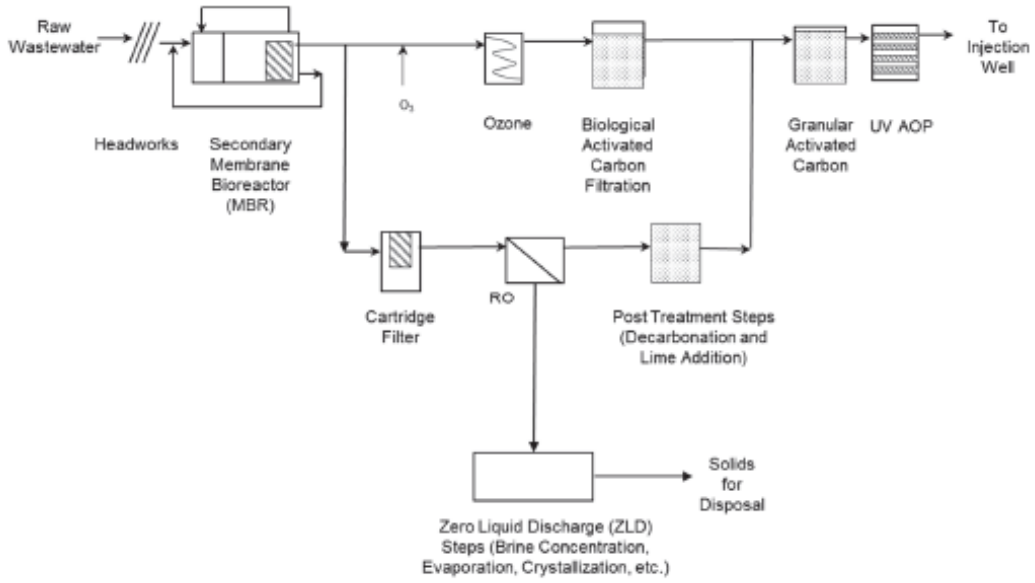
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



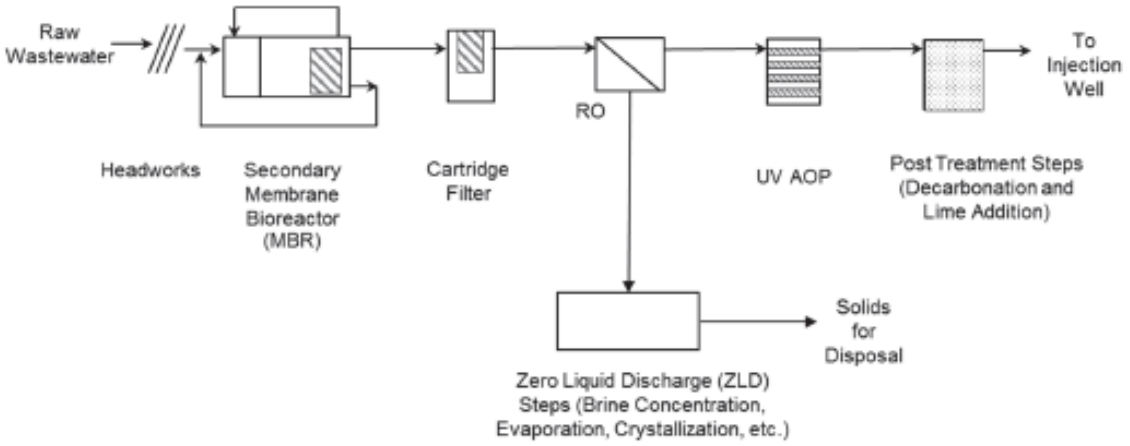
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390

Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP

development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water

supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and

pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program.

As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs.

ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

Table 8. Safe Drinking Water Monitoring and Treatment Licenses

Safe Drinking Water Monitoring and Treatment Licenses
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements

ACRTF means Administrative Completeness Review Time-frame.
SRTF means Substantive Review Time-frame.
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
32. Small and medium water system lead and copper corrosion control activities equivalency demonstration approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-307(B).	21	502	No	A.A.C. R18-4-307, Department application form and site inspection required.
33. Lead and copper optimal corrosion treatment determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(P), R18-4-313(Q).	42	376	No	A.A.C. R18-4-313, Department application form and site inspection required.
34. Lead and copper water quality control parameters determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(P), R18-4-313(Q).	42	376	No	A.A.C. R18-4-313, Department application form and site inspection required.

Historical Note

Table 8 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

Table 9. Repealed

Historical Note

Table 9 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table 9 repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

Table 10. Water Permit Licensing Time-Frames (Business Days)

Permits	Authority	Administrative Completeness Review	Substantive Review	Overall Time-Frame
AQUIFER PROTECTION PERMITS				
Individual Permit No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231[1]	221 266
Complex Individual Permit No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294[1]	284 329
Individual Permit Significant Amendment No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231[1]	221 266
Complex Individual Permit Significant Amendment No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294[1]	284 329
Individual Permit Other Amendment	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	100	135
Temporary Individual Permit	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	145	180
Type 3 General Permit	A.R.S. § 49-245 A.A.C. R18-9-D301 through R18-9-D307	21	60	81

4.01 General Permit 300 services or less More than 300 services	A.R.S. § 49-245 A.A.C. R18-9-E301	42 42	53 94	95[2] 136[2]
Standard Single 4.02, 4.03, 4.13, 4.14, 5.15, and 4.16 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302, R18-9-E303, R18-9-E313, R18-9-E314	42	31	73[2]
4.23 General Permit	A.R.S. § 49-245 A.A.C. R18-9-E323	42	94	136[2]
Standard Combined Two or three Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	53	95[2]
Complex Combined Four or more Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	94	136[2]
SUBDIVISION APPROVALS				
Subdivision Individual facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-408	21	46	67
Subdivision Community facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-403	21	37	58
RECLAIMED WATER PERMITS				
Individual Permit No public hearing Public hearing	A.R.S. § 49-203 A.A.C. R18-9-702 through R18-9-707	35 35	186 231[1]	221 266
Complex Individual Permit No public hearing Public hearing	A.R.S. § 49-203 A.A.C. R18-9-702 through R18-9-707	35 35	249 294[1]	284 329
Type 3 General Permit	A.R.S. § 49-203 A.A.C. R18-9-717, R18-9-718, R18-9-719	21	60	81
ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES) PERMITS				
Individual Permit **Major Facility[5]** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	249 294[1]	284[3, 4] 329[3, 4]
Individual Permit **Minor Facility[6]** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231[1]	221[3, 4] 266[3, 4]
Individual Permit **Stormwater / Construction Activities** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	126 171[1]	161 206[3, 4]
Individual Permit **Major Modification** No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231[1]	221[3, 4] 266[3, 4]
LAND APPLICATION OF BIOSOLIDS REGISTRATIONS				
Biosolids Applicator **Registration Request Acknowledgment**	A.R.S. § 49-255.03 A.A.C. R18-9-1004	15	0	15
UNDERGROUND INJECTION CONTROL PERMITS				
Area Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C624	35 35	249 294[1]	284 329
Class I Well Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part E	35 35	249 294[1]	284 329
Class II Well Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part F	35 35	186 231[1]	221 266

Class III Well Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part G	35 35	186 231[1]	221 266
Class V Well Individual Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part I	35 35	186 231[1]	221 266
Class VI Well Permit and Modification No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part J	35 35	249 294[1]	284 329

[1] A request for a public hearing allows the Department 60 days to publish the notice of public hearing and for the official comment period. Forty-five business days are added to the substantive review time-frame.
[2] Each request for an alternative design, installation, or operational feature under R18-9-A312(G) to a Type 4 General Permit adds eight business days to the substantive review time-frame.
[3] EPA reserves the right, under 40 CFR 123.44, to take 90 days to supply specific grounds for objection to a draft or proposed permit when a general objection is filed within the review period. The first 30 days run concurrently with the Department's official comment period. Forty-five business days will be added to the substantive review time-frame to allow for the EPA review.
[4] If a request for a variance is submitted to the Department, 40 CFR 124.62 requires that specific variances are subject to review by EPA. Under 40 CFR 123.44, EPA reserves the right to take 90-days to approve or deny the variance. Sixty-four business days will be added to the substantive review time-frame to allow for the EPA review.
[5] "Major facility" means any NPDES "facility or activity" classified as such by the EPA in conjunction with the Director.
[6] "Minor facility" means any facility that is not classified as a major facility.

Historical Note

Table 10 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table 10 repealed; new Table 10 made by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1). Table 10 amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2). Table 10 amended by final rulemaking at 28 A.A.R. 1801 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Table 11. Surface Water Licenses

Surface Water Licenses

Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements

ACRTF means Administrative Completeness Review Time-frame.
SRTF means Substantive Review Time-frame.
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
Group I: Clean Water Act (CWA) § 401 certification licenses:				
1. CWA § 401 state certification of a proposed CWA § 404 permit, A.R.S. § 49-202.	21	42	No	A.R.S. § 49-202, 33 U.S.C. § 1341(a), Public notice of underlying proposed permit and Department application form required.

Historical Note

Table 11 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

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.

49-203. 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.

49-211. Direct potable reuse of treated wastewater; fees; rules

A. On or before December 31, 2024, the director shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater 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.

B. On or before December 31, 2024, the director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process.

D-4.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 5

New Section: R18-5-510

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 5

New Section: R18-5-510

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to add one (1) rule Title 18, Chapter 5, Article 5 regarding minimum design criteria for public water systems. This rulemaking is one part of the four part rulemaking submitted by the Department regarding Advance Water Purification (AWP). In 2022, the Department was required by the legislature to create the AWP program and to create the accompanying rules.

Specifically, this rule is needed to clarify that AWP facilities are not subject to A.A.C. R18-5-505 or R18-5-507 because the standards for AWP facilities need to be higher and are addressed specifically in the proposed AWP rules in Chapter 9. The new rule is also intended to clarify that proposed rules in Title 18, Chapter 9, Article 8 will supersede the permitting requirements found in Chapter 5, Article 5. In addition, any conflicts related to design requirements found in Chapter 5, Article 5 and the proposed rules in Chapter 9, Article 8, the design requirements in Chapter 9, Article 8 will apply.

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. Other Department rulemakings related to the AWP program do establish fees.

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. Other Department rulemakings did reference studies and those will be addressed in those rulemakings.

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

The Department states that the rulemaking addressed by the economic, small business, and consumer impact statement (EIS) consists of a number of new sections, as well as amendments in existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters and the respective articles affected therein, are, Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The Department indicates that the rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory programs (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater plant. This AWTF-treated water can then be delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking distribution system. In both cases, the safeguards of the federal Sate Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source for existing users and supports Arizona's future population growth and economic development.

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

The Department indicates that AWP participation is entirely voluntary and in no way precludes any Arizona Water Provider Agencies (WPAs) from instead implementing another approach or water supply resource to meet its water supply needs. The Department states that this approach recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

6. What are the economic impacts on stakeholders?

The Department states that the full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment. The Department indicates that while not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of he AWP program.

The Board believes that the entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. The Board states that, fundamentally, the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can consistently be achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic discharges, their AWPRA partners, etc. Therefore, the Department states that the EIS cannot determine, with exact specificity, the impact to each WPA. The Department indicates it has developed cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. Those three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with side-Strean Reverse Osmosis (RO), and 3) Full-Stream RO.

The Department states that upon evaluation of these representative projects, the EIS provides expected costs related to the implementation of AWP for WPAs enabling them to make informed decisions about whether AWP is a good option for their communities. For Project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For Project 2, Ozone-BAC with side-Stream RO, the estimated costs are aa follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated cost are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

AWP is not anticipated to have an impact of water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of the Advanced Water Treatment Facility (AWTF) development and operations to them. Customers of participating WPAs will, however, benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. The Department indicates that regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. The Department states that it is expected that each participating WPA will do a

comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

The Department states that in addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources.

The Department states that no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs. The Department indicates that the probable cost effect from future AWP development and implementation will be limited to WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

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 no changes between the proposed rules and the final rules.

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

The Department indicates it received two comments as it relates to this rulemaking.

Comment 1 was from a utility organization and stated the following:

- The proposed new language indicates advanced water purification facilities are not subject to R18-5-505 (approval to construct), nor R18-5-507 (approval of construction). However, the requirements of the Safe Drinking Water Act are still applicable. Therefore, language should be added to R18-5-505 that is similar to what is proposed at R18-9-A803: "Nothing in this section exempts a facility from applicable Safe Drinking Water Act requirements in Chapter 4 of this Title."

The Department responded with the following:

- ADEQ appreciates the comment. The AWP program does not supplant or supersede the applicable requirements under the Safe Drinking Water Act (SDWA). Therefore, all AWP facilities must comply with applicable SDWA requirements. However, this rulemaking does include clarifying language to be added to Arizona Administrative Code (A.A.C.)

Title 18, Chapter 5, Article 5. Specifically, a new rule entitled "Applicability of Advanced Water Purification Program" will be placed at R18-5-510 which clarifies the inapplicability of R18-5-505 and R18-5-507 to AWPRAs, amongst other clarifications. Furthermore, in A.A.C. Title 18, Chapter 9, Article 8, the language at R18-9-A803(A) states that compliance with the AWP rules does not exempt a facility from applicable SDWA requirements. R18-5-510 distinguishes between Advanced Water Treatment Facilities that will become (in addition to AWP regulation) Public Water Systems (PWSs), for the purposes of the SDWA and traditional PWSs, which do not involve AWP.

The second comment came from a local government and stated the following:

- We are concerned that the final AWP rules will be substantially weakened before publication based on the previously unpublished statement of achieving parity with drinking water rules. It is stated at 30 AAR 3186, under subtitle "Associated Rulemakings" that changes to Chapter 5 of Title 18 are based on the aim of achieving parity between drinking water regulations and AWP regulations. Considering all the constituents that are known to be or that could exist in wastewater and all the constituents not regulated by the SDWA, this is aiming substantially below the published Draft rules developed by a large number of stakeholders which were stricter than the drinking water rules.

The Department responded with the following:

- ADEQ appreciates the comment. The language in the Notice of Proposed Rulemaking (NPRM) referred to by the commenter above is as follows, "[t]he proposed changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The proposed changes in Chapter 5 aim to achieve parity between the two programs by clarifying, in each, how and where the program components are applicable." The "Department" concedes that the use of the word "parity" is misleading. Put another way, the addition of R18-5-510 to Chapter 5, Article 5 clarifies which part(s) of, and when, the SDWA is applicable to AWP facilities and when AWP permitting and design requirements apply. These clarifying changes to the language in Chapter 5 will not weaken the safeguards developed in the AWP program. On the contrary, the language addressing AWP in Chapter 5 requires AWTFs to be regulated by robust permitting and design requirements specific to AWP. It is also important to note that no changes to the proposed language in R18-5-510 in Chapter 5, Article 5 have been made between the proposed and the final rule.

Council staff believes that the department adequately addressed the comments in accordance with A.R.S. § 41-1052(D)(7).

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

This specific rulemaking does not create a permit or a license. The Department's other proposed rulemakings before the Council do require a permit or license and are addressed in those particular rulemakings. As a summary of those permitting requirements, they are specific to AWP programs and it would not be technically feasible to issue a general permit under A.R.S. § 41-1037(A)(3).

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, while the Safe Drinking Water Act (SDWA) (40 USC § 300f et seq.) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (see R18-9-A801) as a source, which is the subject of this final rule. The Department states, SDWA only contemplates surface and ground water as sources for public water systems. The Department indicates some AWP facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

The purpose of the proposed R18-5-510 is to clarify that when there is overlap between the two, that all SDWA requirements must be met. Specific permitting requirements found in R18-5-505 and R18-5-707 would not meet the elevated standards of the AWP program and is why they are specifically exempted.

11. Conclusion

This regular rulemaking by the Department seeks to add one rule regarding Advance Water purification systems to the existing rules for minimum design criteria for public water systems. The Department specifically seeks to add the rule to clarify the scope of their new Advance Water Purification program and when those program rules govern and supersede other DEQ water programs.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) to "avoid a violation of...state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." The Department was required to complete a rulemaking by December 31, 2024 per A.R.S. § 49-211. The Department indicates that while that date has passed, the goal of the immediate effective date is to prevent the length of time without having this program in place to a minimum. The Department has indicated they have worked diligently in the time frame and have worked extensively with stakeholders to create this program. The Department states that while they could not meet the statutory deadline it was a result of ensuring this new regulatory program was as least burdensome as possible while protecting the health of Arizonans. Council staff believes the Department has provided sufficient documentation of the extensive stakeholder process, and thus Council staff belives the

Department has provided sufficient justification for an immediate efficient date pursuant to A.R.S. § 41-1032(A)(2).

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

January 16, 2025

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Advanced Water Purification (AWP) Regular Rulemaking: Title 18, Environmental Quality, Chapters 1, 5, 9, and 14

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 March 4th, 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. R1-6-201:

I. Information required under A.A.C. R1-6-201(A)(1):

(A)(1)(a) The public record closed for all rules on December 2nd, 2024 at 11:59 p.m.
(A)(1)(b) The rulemaking activity does not relate to a five-year review report.
(A)(1)(c) The rulemaking activity does establish a new fee; please see A.R.S. § 49-211(A) for authority.
(A)(1)(d) The rulemaking does not contain a fee increase as the AWP Program is being established for the first time and has no appropriately comparable precedent in state or Federal law.
(A)(1)(e) An immediate effective date is requested.
(A)(1)(f) 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 (*see* subheading III, below).
(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S.

§ 41-1055(B)(3)(a) (*see* subheading III, below).

(A)(1)(h) A list of documents is enclosed (*see* subheading III, below).

II. Information required under A.A.C. R1-6-201(A)(2) through (8):

(A)(2) Four (4) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading III, below);

(A)(3) The preambles contain an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055 (*see* subheading III, below);

(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading III, below);

(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;

(A)(6) Materials were incorporated by reference in this rulemaking (*see* subheading III, below);

(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading III, below);

(A)(8) A list of statutes or other rules referred to in the definitions (*see* subheading III, below).

III. List of documents enclosed (38 documents total)**:**

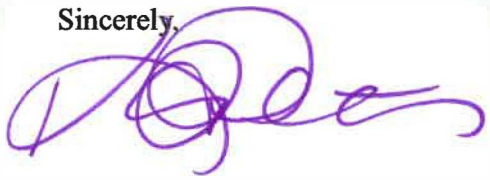
- One (1) Cover Letter (R1-6-201(A)(1));
  - AWP_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWP_JLBC.pdf
- Four (4) NFRMs (R1-6-201(A)(2));
  - AWP_NFRM_18_AAC_1.pdf
  - AWP_NFRM_18_AAC_5.pdf
  - AWP_NFRM_18_AAC_9.pdf
  - AWP_NFRM_18_AAC_14.pdf
- Four (4) EISs (R1-6-201(A)(3));
  - AWP_EIS_18_AAC_1.pdf
  - AWP_EIS_18_AAC_5.pdf
  - AWP_EIS_18_AAC_9.pdf
  - AWP_EIS_18_AAC_14.pdf
- Four (4) Public Comments Received Documents (R1-6-201(A)(4));
  - AWP_Cmts_18_AAC_1.pdf
  - AWP_Cmts_18_AAC_5.pdf
  - AWP_Cmts_18_AAC_9.pdf
  - AWP_Cmts_18_AAC_14.pdf

- Thirteen (13) Materials Incorporated by Reference (R1-6-201(A)(6));
  - "Method 5710B"
    - R18-9-A802(B)(1); R18-9-F834(C)(2)(b)(v)
    - SM_5710.pdf
  - "Method 5710C"
    - R18-9-A802(B)(2); R18-9-F834(C)(2)(a) & (b)
    - SM_5710.pdf
  - "Analytical and Data Quality Systems"
    - R18-9-A802(B)(3); R18-9-A802(C)(1)
    - 2018-1000-Analytical-and-Data-Quality-Systems.pdf
  - Quality System"
    - R18-9-A802(B)(4); R18-9-A802(C)(2)
    - SM_7020.pdf
  - "Quality Assurance and Quality Control in Laboratory Toxicity Tests"
    - R18-9-A802(B)(5); R18-9-A802(C)(3)
    - SM_8020.pdf
  - "Quality Assurance/Quality Control"
    - R18-9-A802(B)(6); R18-9-A802(C)(4)
    - SM_9020.pdf
  - "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices"
    - R18-9-A802(B)(7); R18-9-F832(C)(4)
    - ASTM-D4194-23.pdf
  - "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5"
    - R18-9-A802(B)(8); R18-9-F834(C)(2)(c)(i) & (ii)
    - CCL5_DBPs_87_FR_68066.pdf
  - "2018 Edition of the Drinking Water Standards and Health Advisories"
    - R18-9-A802(B)(9); R18-9-E826(D)(4), (5), (6) & (7); R1 8-9-F834(C)(2)(c)(ii)
    - HA_Table - 2018.pdf
  - "Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA"
    - R18-9-A802(B)(11); R18-9-E828(C)(9)
    - EPA Method 1623.1.pdf
  - "Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR"
    - R18-9-A802(B)(12); R18-9-E828(C)(9)
    - EPA Method 1615.pdf
  - "Characteristic of ignitability"
    - R18-9-A802(B)(13); R18-9-E824(B)(13)(a)

        - 40 CFR 261.21.pdf
    - "Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility"
        - R18-9-A802(B)(14); R18-9-F832(D)(4)(b)(viii)
        - Consideration_DPR_Downstream.pdf
- General and Specific Authorizing Statutes (R1-6-201(A)(7));
    - 49-104 - Powers and duties of the department and director.pdf
    - 49-203 - Powers and duties of the director and department.pdf
    - 49-211 - Direct potable reuse of treated wastewater; fees; rules.pdf
- Statutes or Rules Referred to in the Definitions (R1-6-201(A)(8));
    - R1_6_201_A_8.pdf
        - 40_CFR_141_201.pdf
        - 40_CFR_Part_141 - 7_1_23.pdf
        - 42_USC_300f_et_seq.pdf
        - 49-201 - Definitions.pdf
        - 49-203 - Powers and duties of the director and department.pdf
        - AAC_Title_18_Chptr_9_Arts_1_2_3.pdf
        - ARS_Title 49 _Chpt_2_ Art_3.pdf
- A.R.S. § 41-1039(B) Governor's Approval
    - WATER Direct Potable Reuse 2nd APPROVAL.pdf

Thank you for your timely review and approval. Please contact Jon Rezabek or Natalie Kilker, Legal Specialists, Water Quality Division, 602-771-8219, 602-771-0358 or rezabek.jon@azdeq.gov, kilker.natalie@azdeq.gov if you have any questions.

Sincerely,



Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY - ENVIRONMENTAL REVIEWS AND CERTIFICATION

PREAMBLE

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

March 5, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-5-510	New Section

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), (7); 49-203(A)(7), (9), (10)

Implementing statute: A.R.S. § 49-211

4. The effective date of the rule:

This rule shall become effective immediately after a certified original of the rule and preamble are filed with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is March 4, 2025.

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):

The rule shall be effective on March 4, 2025. ADEQ selected this date pursuant to A.R.S. § 41-1032(A)(2) in order "to avoid a violation of … state law, if the need for an immediate effective date is not created due to the agency's delay or inaction".

A.R.S. § 49-211 requires ADEQ to, "[o]n or before December 31, 2024 … adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program [A.K.A. - AWP regulatory program], including rules establishing permitting standards and a permit application process."

While an immediate effective date will not avoid a violation of A.R.S. § 49-211, it serves to ameliorate the extent of the violation by establishing an effective date as close in time as possible to the statutory deadline "on or before December 31, 2024". The Legislature charged ADEQ with the adoption of an advanced water purification program in Fall 2022, setting a justifiably aggressive deadline of December 31, 2024. Since that time, ADEQ diligently undertook an extensive program design and rule-writing approach to appropriately design the revolutionary program. Additionally, ADEQ conducted a special stakeholder approach commensurate with the intricacies of the program, itself, with myriad stakeholder efforts outlined in Section 7 of this Notice of Final Rulemaking. This process included engagement at all phases of the project, in

the program framework and guiding principle development phase to the draft rule phase, and included multiple opportunities for ADEQ to work with and educate stakeholders, receive feedback on program components, and improve the program. Arizona is one of only a handful of states with a regulatory framework for advanced water purification, and the process was, therefore, carefully conducted to best preserve the interests of the Legislature and the health of Arizonans. While ADEQ worked just as aggressively to achieve the statutory deadline, best efforts nevertheless fell a few months short. For these reasons and pursuant to A.R.S. § 41-1032(A)(2), ADEQ did not delay or fail to act in such a way that led to the need for an immediate effective date.

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 Proposed Rulemaking: 30 A.A.R. 3192, Issue Date: November 1, 2024, Issue Number: 44, File Number: R24-210.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2878, Issue Date: September 20, 2024, Issue Number: 38, File Number: R24, 176.

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

Name: Jon Rezabek
Natalie Kilker
Title: Legal Specialists
Division: Water Quality
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-8219
Fax: (602) 771-2366
Email: reuserulemaking@azdeq.gov
Website: https://www.azdeq.gov/awp-rulemaking

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

***Introduction*:**

The Arizona Department of Environmental Quality ("ADEQ") is mandated by the Arizona Legislature, pursuant to Arizona Revised Statutes (A.R.S.) § 49-211, to "adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process". The statute, adopted from House Bill 2861, as enacted in the Second Regular Session on June 28, 2022, became effective on September 24, 2022. For purposes of this Notice and the final rule, the term "direct potable reuse" is synonymous with "Advanced Water Purification" (or "AWP"), as the program is now called.

ADEQ, in consideration of Arizona's water supply needs and the Legislative mandate, interpreted A.R.S. § 49-211 as a call to establish an AWP program that is both protective of human health and the environment, as well as imposing minimum burden upon the stakeholder community in achieving that goal. The result of that effort is detailed in the final rules to be placed in the Arizona Administrative Code (A.A.C.), Title 18, Chapters 1, 5, 9 and 14, through this Notice of Final Rulemaking (NFRM) and through the simultaneously filed associated NFRMs.

***Background*:**

Arizona faces significant water supply challenges requiring proactive approaches to conservation and stewardship, in anticipation of decreased water availability in the future. Arizona is currently experiencing a severe and sustained drought, persisting since 1994. The state has experienced an average annual precipitation of approximately 12 inches, and climate data reveals a concerning trend: a consistent reduction of 0.9 inches of rainfall per year over the past three decades (Arizona State University, 2023, Climate of Arizona, https://azclimate.asu.edu/climate/). As a result of the continuing mega-drought, a Drought Emergency Declaration has existed since 1999. The impacts can be felt heavily in the rural areas of the state, where alternative water supplies are generally very limited and the economy is strongly affected by drought (e.g., grazing, irrigated agriculture, recreation, forestry). Most of rural Arizona relies exclusively on groundwater as its primary water source and lacks the groundwater regulations and conservation requirements which have been present in the state's active management areas (AMAs) and irrigation non-expansion areas (INAs). In addition to the reduced precipitation within Arizona, the Colorado River Basin is also facing decades-long drought conditions, which have led to historically low water levels in Colorado River system reservoirs. As a result, Arizona has implemented measures to reduce its consumption of Colorado River water. The Lower Colorado River Basin first experienced a Tier 1 Shortage as agreed in the 2007 Interim Guidelines and the Drought Contingency Plan in 2021. In 2022, Bureau of Reclamation Commissioner Camille Touton called on the Colorado River states to conserve between 2-4 million acre feet per year to address the critically low levels in Lake Powell and Lake Mead following a dire water year. Fortunately, voluntary reductions in the Lower Basin and a healthy water year 2022 averted a decline to critically low elevations. However, as the Basin States look ahead, climate projections and historical trends indicate that the Basin is likely to face increasing average temperatures and reduced precipitation in the coming years. Arizonans will likely be called upon to live with further reduced Colorado River supplies for the foreseeable future as the next set of operational guidelines for the Colorado River are finalized.

Beyond the shrinking water supply, economic growth presents water providers with formidable challenges in meeting demand. As water-intensive industries relocate to Arizona, industrial water demands may increase. Furthermore, there may be challenges with maintaining the necessary housing growth due to the release of the new models of groundwater conditions in the Phoenix and Pinal AMAs. The results of the groundwater flow model projections show that over a period of 100 years, the Phoenix AMA will experience 4.86 million acre-feet (maf) of unmet demand for groundwater supplies and the Pinal AMA will experience 8.1 maf of unmet demand for groundwater supplies, given current conditions. In keeping with these findings of unmet demand, the State will not approve new determinations of Assured Water Supply within the Phoenix and Pinal AMAs based on groundwater supplies. This will lead to an increased competition for limited alternative water supplies. As growth continues, there will be an increasing need for sustainable and innovative water resource management strategies to accommodate the state's evolving needs.

***What is AWP*?**

Advanced Water Purification (AWP) is defined as the treatment and distribution of a municipal wastewater stream for use as potable water without the use or with limited use of an environmental buffer (US EPA, 2017, Potable Reuse Compendium). AWP has been shown to be a safe and effective source of potable water over decades of implementation in projects that have been installed worldwide at facilities in Big Spring, Texas (2013); Wichita Falls, Texas (2014); Namibia (1968 and 2002); Singapore (2019); and South Africa (2011) (Lahnsteiner, J., Van Rensburg, P., & Esterhuizen, J., 2018, Direct potable reuse–a feasible water management option. Journal of Water Reuse and Desalination, 8(1), 14-28).

AWP applications typically consist of a conventional water reclamation facility (WRF) or wastewater treatment plant (WWTP) that performs solids, carbon, nutrient, and pathogen removal and an advanced water treatment facility (AWTF) that provides additional pathogen and trace chemical removal. An AWTF is a utility or treatment plant where recycled wastewater is treated to produce purified water to meet specific AWP requirements. AWTFs use a multi-barrier approach where several redundant unit processes in series are installed to treat WRF effluent to potable water standards. Depending on the site-specific infrastructure configuration and treatment capabilities, the AWTF effluent may be introduced into several different locations of the potable water treatment and distribution system to be reused: (i) in the intake to the existing drinking water treatment facility (DWTF); (ii) after the DWTF and prior to the potable water distribution system; or (iii) Directly into the potable water distribution system.

***Evolution of AWP in Regulations*:**

A predecessor to the AWP program was adopted in the A.A.C. in 2018 at R18-9-E701, including a definition of "[a]dvanced reclaimed water treatment facility" at R18-9-A701(1). An associated NFRM filed simultaneously with this NFRM will repeal these rules in their entirety to make way for the AWP program. This prior, less detailed, single-ruled program was placed in Title 18, Chapter 9, Article 7 of the A.A.C. Article 7 is entitled "Use of Recycled Water". Part E of Article 7 was entitled "Purified Water for Potable Use" and R18-9-E701 was entitled "Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility". R18-9-E701 detailed basic requirements for an advanced reclaimed water treatment facility and, during the rule's tenure,

was used to permit one such facility. The facility was not authorized to, and did not, distribute purified water as drinking water through established conveyances or networks. As was stated above, in recent years, the Arizona Legislature determined a need for a more robust regulatory program for AWP. The Legislature passed House Bill 2861 into law in 2022, effectuating statute A.R.S. § 49-211, which led directly to the establishment of the final AWP program and the repeal of the previous program.

***Associated Rulemakings*:**

This final rulemaking includes four NFRMs, adding, repealing or amending rules in A.A.C. Title 18. Environmental Quality:

- Chapter 1 (Department of Environmental Quality - Administration),
- Chapter 5 (Department of Environmental Quality - Environmental Reviews and Certification),
- Chapter 9 (Department of Environmental Quality - Water Pollution Control), and
- Chapter 14 (Department of Environmental Quality - Permit and Compliance Fees).

The final changes to Chapter 1 are specific to updating the Licensing Time-Frame requirements in Article 5 to account for the new AWP program. The final changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The final additions, amendments and repeals to Chapter 9 are all aimed at making way for and establishing the AWP regulatory program. The final changes to Chapter 14 are specific to updating the Water Quality fees in Article 1 to accommodate the AWP program commensurate with other water quality programs.

***Necessity of Adding R18-5-510*:**

The addition of a new section at R18-5-510 contains language that reflects AWP programmatic rule R18-9-A803, which is entitled "Applicability of the Safe Drinking Water Act" and details the interconnection between the AWP program and the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The AWP regulatory program derives its authority from Arizona state statute, as is detailed above. At the time of this rulemaking, the AWP subject matter had no direct federal regulatory analog. However, due to the flexibility of the AWP program and the multitude of options available to an AWP permittee concerning how to best employ AWP in accordance with the system needs, infrastructure, and economic situation, an AWTF may introduce advanced treated water at several locations, including to a public water system as a source (advanced treated water), or directly to distribution for human consumption (finished water). This means that there are potential interconnections between the AWP program and the protections of the Safe Drinking Water Act. Therefore, the content of the final programmatic rule at R18-9-A803 and its final corresponding rule at R18-5-510 was necessary to outline that intersection. Specifically, R18-5-510 specifies that AWP permitting processes in Chapter 9, Article 8 supersede permitting process requirements in A.A.C. Title 18, Chapter 5, Article 5, including R18-5-505 (Approval to Construct) and R18-5-507. (Approval of Construction). Lastly, R18-5-510 specifies that where AWP design requirements in A.A.C. Title 18, Chapter 9, Article 8 requirements conflict with requirements in A.A.C. Title 18, Chapter 5, Article

5, AWP design requirements supersede. Depending on the AWP project specifics, provisions in A.A.C. Title 18, Chapter 5, Article 5 may be applicable.

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:

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:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and

infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for

additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program. This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact	Minimal	

	some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).		
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with

rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could

involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DPR regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ

believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that

the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment

processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required,

resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public

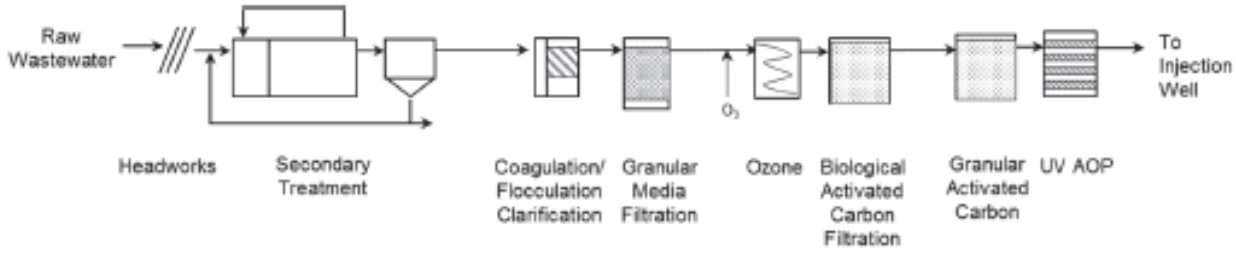
confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

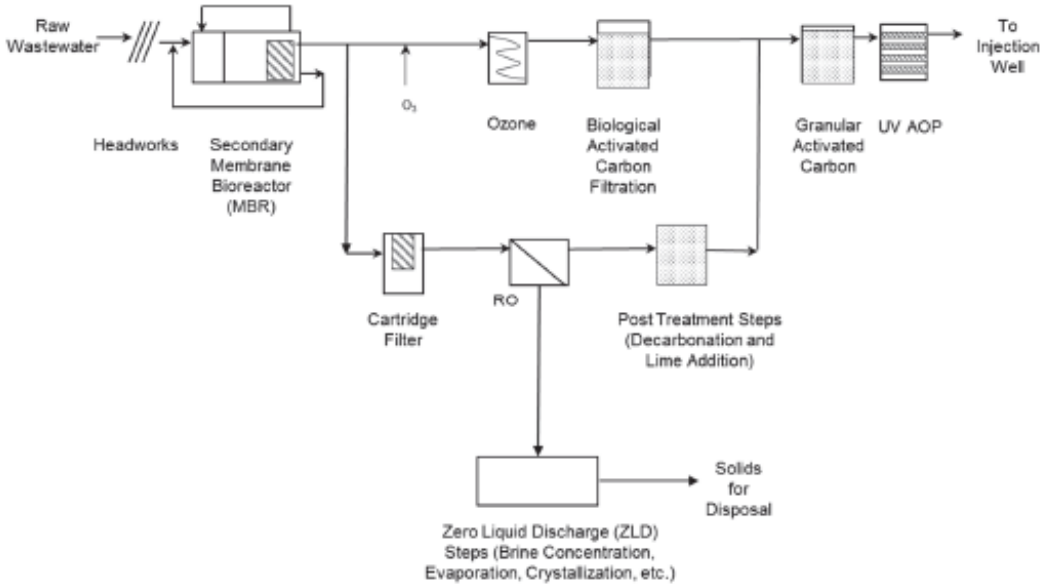
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



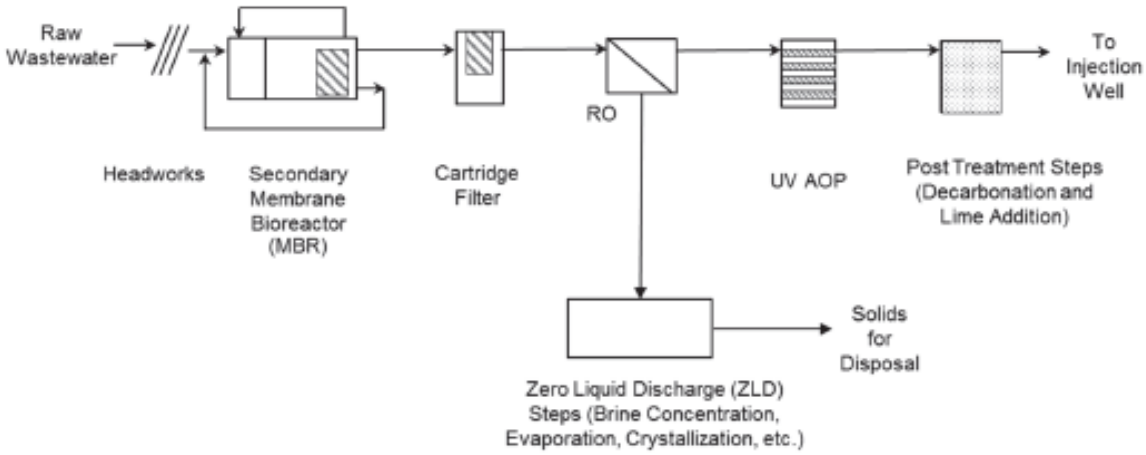
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390
Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs.

In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do

a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high

quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that

water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part

of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change

for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are

necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors.

Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program. As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs. ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational,

and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

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

Comment 1: Utility

The proposed new language indicates advanced water purification facilities are not subject to R18-5-505 (approval to construct), nor R18-5-507 (approval of construction). However, the requirements of the Safe Drinking Water Act are still applicable. Therefore, language should be added to R18-5-505 that is similar to what is proposed at R18-9-A803: "Nothing in this section exempts a facility from applicable Safe Drinking Water Act requirements in Chapter 4 of this Title."

ADEQ Response 1:

ADEQ appreciates the comment. The AWP program does not supplant or supersede the *applicable* requirements under the Safe Drinking Water Act (SDWA). Therefore, all AWP facilities must comply with *applicable* SDWA requirements. However, this rulemaking does include clarifying language to be added to Arizona Administrative Code (A.A.C.) Title 18, Chapter 5, Article 5. Specifically, a new rule entitled "Applicability of Advanced Water Purification Program" will be placed at R18-5-510 which clarifies the inapplicability of R18-5-505 and R18-5-507 to AWPRAs, amongst other clarifications.

Furthermore, in A.A.C. Title 18, Chapter 9, Article 8, the language at R18-9-A803(A) states that compliance with the AWP rules does not exempt a facility from *applicable* SDWA requirements. R18-5-510 distinguishes between Advanced Water Treatment Facilities that will become (in addition to AWP regulation) Public Water Systems (PWSs), for the purposes of the SDWA and traditional PWSs, which do not involve AWP.

Comment 2: Local Government

We are concerned that the final AWP rules will be substantially weakened before publication based on the previously unpublished statement of achieving parity with drinking water rules. It is stated at 30 AAR 3186, under subtitle "Associated Rulemakings" that changes to Chapter 5 of Title 18 are based on the aim of achieving parity between drinking water regulations and AWP regulations. Considering all the constituents that are known to be or that could exist in wastewater and all the constituents not regulated by the SDWA, this is aiming substantially below the published Draft rules developed by a large

number of stakeholders which were stricter than the drinking water rules.

ADEQ Response 2:

ADEQ appreciates the comment. The language in the Notice of Proposed Rulemaking (NPRM) referred to by the commenter above is as follows, "[t]he proposed changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The proposed changes in Chapter 5 aim to achieve parity between the two programs by clarifying, in each, how and where the program components are applicable." The "Department" concedes that the use of the word "parity" is misleading. Put another way, the addition of R18-5-510 to Chapter 5, Article 5 clarifies which part(s) of, and when, the SDWA is applicable to AWP facilities and when AWP permitting and design requirements apply. These clarifying changes to the language in Chapter 5 will not weaken the safeguards developed in the AWP program. On the contrary, the language addressing AWP in Chapter 5 requires AWTFs to be regulated by robust permitting and design requirements specific to AWP. It is also important to note that no changes to the proposed language in R18-5-510 in Chapter 5, Article 5 have been made between the proposed and the final rule.

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 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:

Yes, this rulemaking establishes the Advanced Water Purification regulatory program, which includes issuing individual permits, pursuant to A.R.S. § 49-211. While the product (advanced treated water or finished water) of an Advanced Water Purification regulatory program facility is substantially the same, the facilities, activities and practices regulated by the program will be substantially different in nature due to the treated wastewater source, a multitude of viable technological process configurations, a swift pace of technological progress in the field and the custom nature of the regulated parties and their circumstances. Moreover, general permits are not "technically feasible" for the Advanced Water Purification regulatory program under A.R.S. § 41-1037(A)(3), and not used in the program.

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:

While the Safe Drinking Water Act (SDWA) (40 USC § 300f *et seq.*) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (*see* R18-9-A801) as a source, which is the subject of this final rule. In fact, SDWA only contemplates surface

and ground water as sources for public water systems. Some Advanced Water Purification facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

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 rule follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 5. MINIMUM DESIGN CRITERIA

Section

ARTICLE 5. MINIMUM DESIGN CRITERIA

R18-5-510. Applicability of Advanced Water Purification Program

A. Advanced water purification permitting processes in Chapter 9, Article 8 supersede permitting process requirements in this Article. Advanced water purification facilities are neither subject to A.A.C. R18-5-505 (approval to construct) nor A.A.C. R18-5-507 (approval of construction) requirements in this Article.

B. Where advanced water purification design requirements in Chapter 9, Article 8 conflict with requirements in this Article, advanced water purification design requirements supersede design requirements in this Article.

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 5

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

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA

and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program.

This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative	Minimal	

	impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).		
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate

and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DRP regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general

requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

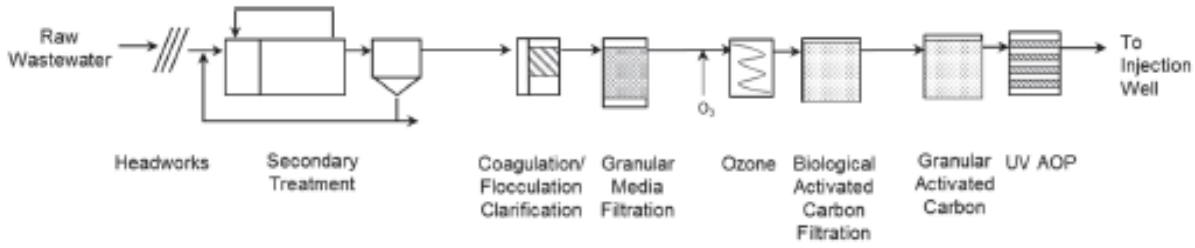
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

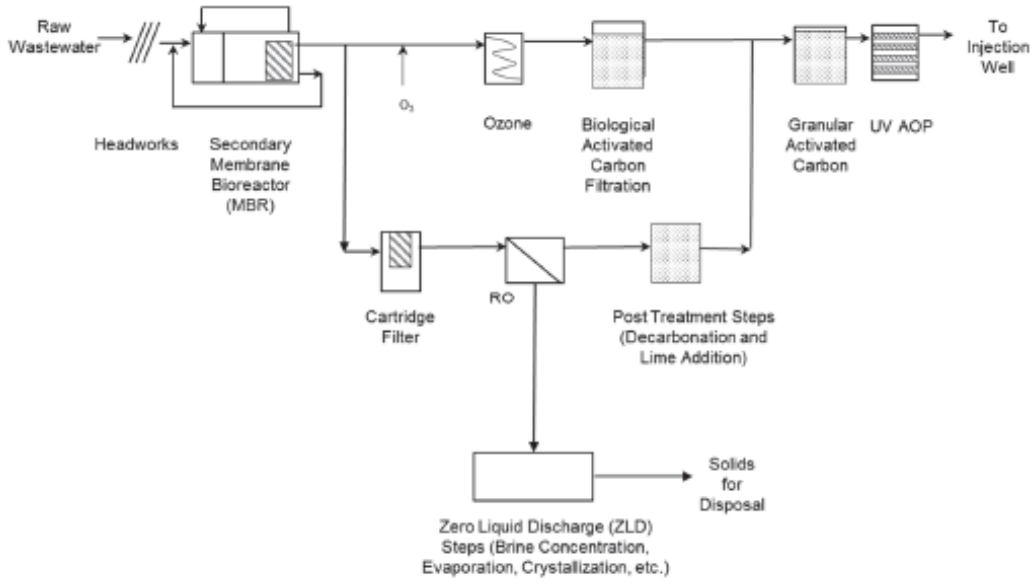
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



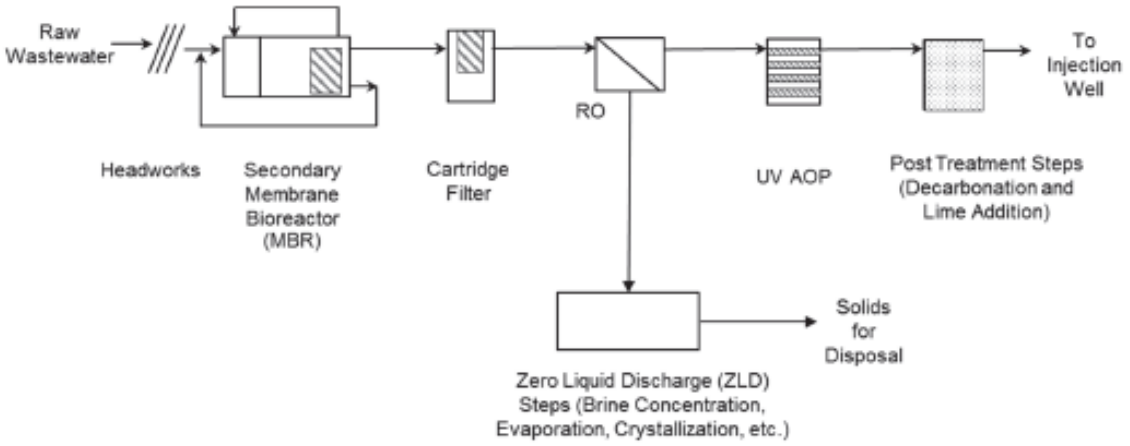
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390

Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP

development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water

supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and

pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program.

As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs.

ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

AWP NFRM Public Comments - 18 AAC 5

Comment 1: Utility
The proposed new language indicates advanced water purification facilities are not subject to R18-5-505 (approval to construct), nor R18-5-507 (approval of construction). However, the requirements of the Safe Drinking Water Act are still applicable. Therefore, language should be added to R18-5-505 that is similar to what is proposed at R18-9-A803: "Nothing in this section exempts a facility from applicable Safe Drinking Water Act requirements in Chapter 4 of this Title."

Comment 2: Local Government
We are concerned that the final AWP rules will be substantially weakened before publication based on the previously unpublished statement of achieving parity with drinking water rules. It is stated at 30 AAR 3186, under subtitle "Associated Rulemakings" that changes to Chapter 5 of Title 18 are based on the aim of achieving parity between drinking water regulations and AWP regulations. Considering all the constituents that are known to be or that could exist in wastewater and all the constituents not regulated by the SDWA, this is aiming substantially below the published Draft rules developed by a large number of stakeholders which were stricter than the drinking water rules.

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).

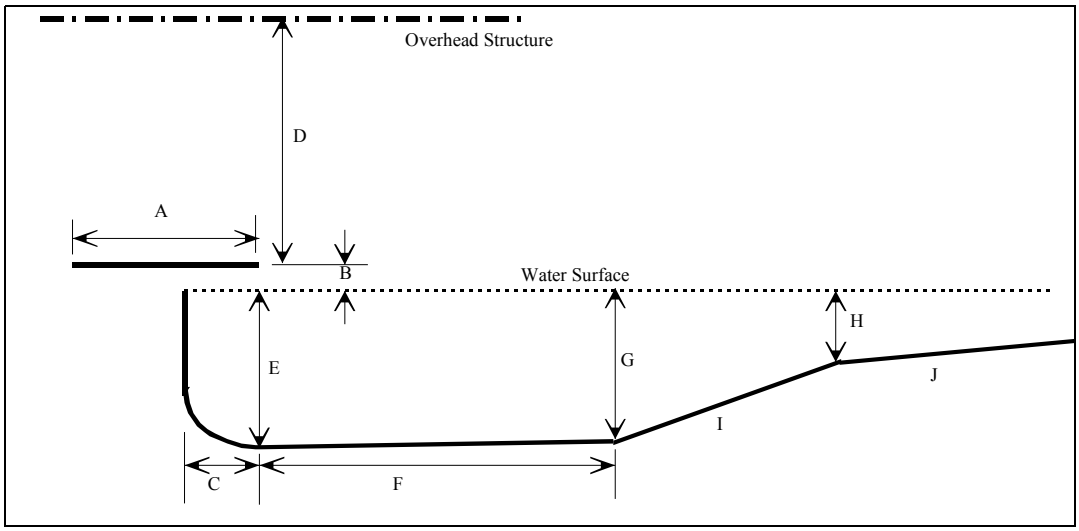
R18-5-251. Enforcement

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.

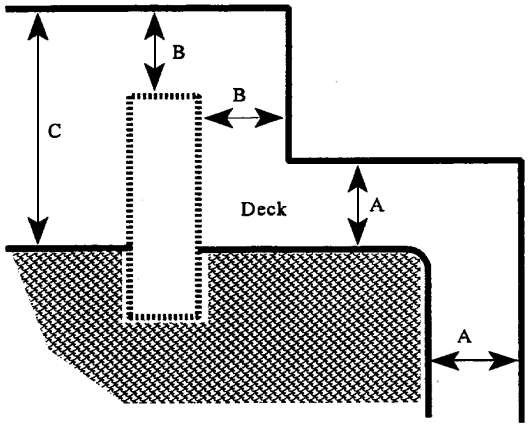
A. Maximum length of diving board	10 feet
B. Maximum height of board above the water	20 inches
C. Overhang of the board from wall	Minimum: 2 feet Maximum: 3 feet
D. Minimum distance to an overhead structure	15 feet
E. Minimum depth of water at the plummet	9 feet
F. Distance from plummet to start of upslope	18 feet
G. Minimum depth of water at start of the upslope	Depth of water at plummet minus 6 inches

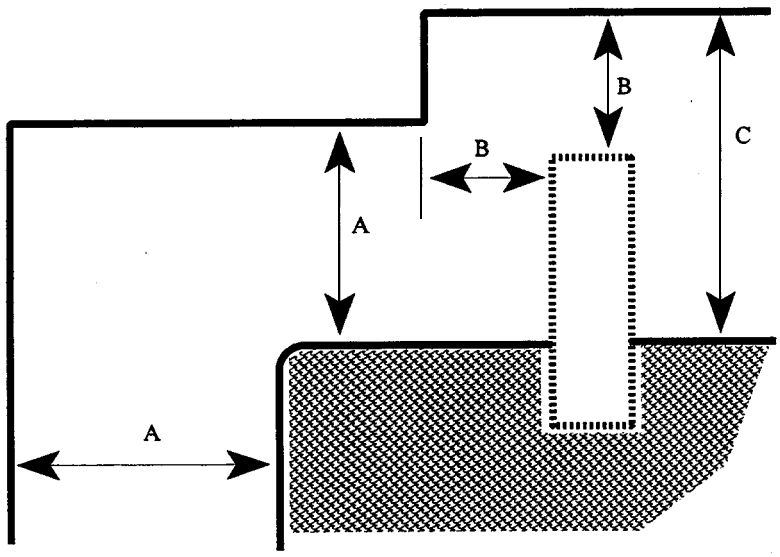
H. Depth of water at the breakpoint	Public swimming pool: 5 feet Semipublic swimming pool: 4 feet
I. Maximum slope: breakpoint towards deep end	1 foot of fall in 3 feet
J. Slope of bottom in shallow area	1 foot of fall in 10 feet
Minimum width of pool in diving area	20 feet
From plummet to pool wall 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).

49-211. Direct potable reuse of treated wastewater; fees; rules

A. On or before December 31, 2024, the director shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater 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.

B. On or before December 31, 2024, the director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process.

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.

49-203. 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.

D-5.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 14

Amend: R18-14-101, R18-14-102, R18-14-104, Table 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 14

New Section: R18-14-101, R18-14-102, R18-14-104, Table 1

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend four (4) rules and one (1) table in Title 18, Chapter 14, Article 1 regarding permit and compliance fees. This rulemaking is one part of the four part rulemaking submitted by the Department regarding Advance Water Purification (AWP). In 2022, the Department was required by the legislature to create the AWP program and to create rules to accompany the program. These amendments are needed to clarify that the AWP program, like other DEQ water programs, is a fee for service program. The fees that the Department proposes concern hourly review rates for permit applications and annual fees. A.R.S. § 49-211 permits the Department to establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program.

In R18-14-101, the Department is proposing to amend the definitions to include the definition for AWP and include AWP in the definition of water quality protection service.

In R18-14-102, the Department is proposing to add an hourly rate fee of $223. The Department stated this hourly figure is higher than the other Department programs because new staff will need to be hired, and this staff requires a very specific type of background and experience that is

less common to find because of the limited number of states that operate similar programs. The Department provided the notice of additional staff to the Joint Budget Legislative Committee, as required by A.R.S. § 41-1055(B)(3).

The Department is proposing to amend Table 1 to add that there is no maximum fee for permits related to the AWP program, this includes regular permits, demonstration permits, significant amendments and reviews, and demonstration permits significant amendment and reviews. The Department has indicated that they have a no max amount because the AWP program is completely new and it is difficult to predict review times, especially as the technology used to review evolves. The fee amount comes from the Department evaluating the administrative costs for the number of necessary technical staff, administrators, and management that are expected to participate in the review.

In R18-14-104, the Department is adding Annual Fees for AWP permits and AWP Demonstration Permits, with an annual fee of $101,250, pending adjustments made under the existing subsection (F) of this rule.

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?

Pursuant to A.R.S. § 41-1008(A)(1), "an agency shall not…[c]harge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.

This rulemaking does establish a new fee to carry out the AWP program. Multiple DEQ water programs use a fee model where the Department assess permit applications and renewals using an hourly rate with there being a cap on the maximum fee charged to an applicant or permit holder. For most programs the standard rate is $174 per hour and for the UIC program the amount is $145. This amount can change based on the Consumer Price index, and that process is explained in R18-14-102(D).

The cap amounts vary depending on program and permit type. The UIC program Class VI does not have a maximum cap amount. As with the hourly rate, the maximum cap can change based on the Consumer Price index, and the process for that can be found in R18-14-104.

For the AWP program, DEQ is proposing an hourly fee of $223 and no maximum cap. The Department has indicated that they arrived at this amount based on the need for the Department to have to hire 1.5 full time high level employees to support the program. This is an area that requires specific knowledge and experience that is different from other programs and less common among potential applicants. Stakeholders have not expressed any concerns over the

hourly fee, lack of a maximum cap, or the annual fee and the Department reached these figures with their input.

The Department did consider other states permitting processes when considering fees. However, other states do not have programs that are strictly funded by fees. Colorado is exploring having a fee funded program but their DEQ counterpart is still in the stakeholder phase. Other states, like Texas are funded through a mix of state/federal funding and fees.

In addition, the Department is proposing an annual fee of $101,250. This amount can change based on the Consumer Price index, and that process is explained in R18-14-104(D).

These fees are permitted by A.R.S. § 49-2111 because the statute expressly authorizes the fees.

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. Other Department rulemakings did reference studies and those will be addressed in those rulemakings.

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

The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211. The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment.

Impacts to the Department include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program; however, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees. The WPAs that elect to apply for a permit under the AWP program are expected to have the largest expected impact: this impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Customers of WPAs that have adopted AWP are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. The general public is impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

In general, while the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

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—because AWP participation is entirely voluntary and each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options—potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. The AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any advanced water treatment facility's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

6. What are the economic impacts on stakeholders?

To determine the economic impact on the stakeholders identified in the economic impact summary, the Department adopted the following convention: minimal impact to mean $10,000 or less; moderate impact to mean $10,001-$1,000,000; substantial impact to mean $1,000,001 or more; and significant impact to mean that the cost/burden could not be calculated, but the Department expects it to be significant.

A high-level overview of the economic impact on stakeholders is given in the following table:

Description of Affected Group	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	

	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).	Minimal	
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

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 no changes between the proposed rules and the final rules.

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

The Department indicates it received one comment as it relates to this rulemaking. The comment was concerned about the Department using taxpayer money on this program.

The Department responded that the program is voluntary to enter and is paid for directly by those who opt into the program. While consumers can be impacted by those

utilities/municipalities that opt into the program, the AWP program does require that those applicants develop a communication plan to alert impacted consumers and for applicants to provide consistent updates to impacted consumers. The Department believes that the fees imposed on those utilities/municipalities are in proportional to the expected costs of the program.

Council staff believes that the Department's response was sufficient.

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

This specific rulemaking does not create a permit or a license, it only explains the fee process associated with a permit or a license. The specific permit requirements are found in the proposed rulemaking for Title 18, Chapter 9.

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, while the Safe Drinking Water Act (SDWA) (40 USC § 300f et seq.) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated wastewater" (see R18-9-A801) as a source, which is the subject of this final rule. The Department states, SDWA only contemplates surface and ground water as sources for public water systems. The Department indicates some AWP facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

11. Conclusion

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend four (4) rules and one (1) table in Title 18, Chapter 14, Article 1 regarding permit and compliance fees. The amendments are necessary to include hourly and annual fees that relate to the newly legislature mandated AWP program and to make clear that the AWP program is fully funded through fees and not general Department funds. The Department has indicated to Council staff that they have been in consistent discussions with potential applicants /stakeholders and that there have not been any concerns with the proposed fee amounts.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) to "avoid a violation of...state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." The Department was required to complete a rulemaking by December 31, 2024 per A.R.S. § 49-211. The Department indicates that while that date has passed, the goal of the immediate effective date is to prevent the length of time without having this program in place to a minimum. The Department has indicated they have worked diligently in the time frame and have worked extensively with stakeholders to create this

program. The Department states that while they could not meet the statutory deadline it was a result of ensuring this new regulatory program was as least burdensome as possible while protecting the health of Arizonans. Council staff believes the Department has provided sufficient documentation of the extensive stakeholder process and that missing the timeframe was not caused by any Department inaction or delay. Thus Council staff believes the Department has provided sufficient justification for an immediate efficient date pursuant to A.R.S. § 41-1032(A)(2).

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

January 16, 2025

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Advanced Water Purification (AWP) Regular Rulemaking: Title 18, Environmental Quality, Chapters 1, 5, 9, and 14

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 March 4th, 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. R1-6-201:

I. Information required under A.A.C. R1-6-201(A)(1):

(A)(1)(a) The public record closed for all rules on December 2nd, 2024 at 11:59 p.m.
(A)(1)(b) The rulemaking activity does not relate to a five-year review report.
(A)(1)(c) The rulemaking activity does establish a new fee; please see A.R.S. § 49-211(A) for authority.
(A)(1)(d) The rulemaking does not contain a fee increase as the AWP Program is being established for the first time and has no appropriately comparable precedent in state or Federal law.
(A)(1)(e) An immediate effective date is requested.
(A)(1)(f) 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 (*see* subheading III, below).
(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S.

§ 41-1055(B)(3)(a) (*see* subheading III, below).

(A)(1)(h) A list of documents is enclosed (*see* subheading III, below).

II. Information required under A.A.C. R1-6-201(A)(2) through (8):

(A)(2) Four (4) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading III, below);

(A)(3) The preambles contain an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055 (*see* subheading III, below);

(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading III, below);

(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;

(A)(6) Materials were incorporated by reference in this rulemaking (*see* subheading III, below);

(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading III, below);

(A)(8) A list of statutes or other rules referred to in the definitions (*see* subheading III, below).

III. List of documents enclosed (38 documents total)**:**

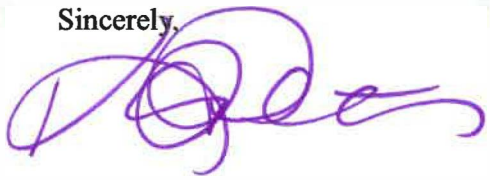
- One (1) Cover Letter (R1-6-201(A)(1));
  - AWP_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWP_JLBC.pdf
- Four (4) NFRMs (R1-6-201(A)(2));
  - AWP_NFRM_18_AAC_1.pdf
  - AWP_NFRM_18_AAC_5.pdf
  - AWP_NFRM_18_AAC_9.pdf
  - AWP_NFRM_18_AAC_14.pdf
- Four (4) EISs (R1-6-201(A)(3));
  - AWP_EIS_18_AAC_1.pdf
  - AWP_EIS_18_AAC_5.pdf
  - AWP_EIS_18_AAC_9.pdf
  - AWP_EIS_18_AAC_14.pdf
- Four (4) Public Comments Received Documents (R1-6-201(A)(4));
  - AWP_Cmts_18_AAC_1.pdf
  - AWP_Cmts_18_AAC_5.pdf
  - AWP_Cmts_18_AAC_9.pdf
  - AWP_Cmts_18_AAC_14.pdf

- Thirteen (13) Materials Incorporated by Reference (R1-6-201(A)(6));
  - "Method 5710B"
    - R18-9-A802(B)(1); R18-9-F834(C)(2)(b)(v)
    - SM_5710.pdf
  - "Method 5710C"
    - R18-9-A802(B)(2); R18-9-F834(C)(2)(a) & (b)
    - SM_5710.pdf
  - "Analytical and Data Quality Systems"
    - R18-9-A802(B)(3); R18-9-A802(C)(1)
    - 2018-1000-Analytical-and-Data-Quality-Systems.pdf
  - Quality System"
    - R18-9-A802(B)(4); R18-9-A802(C)(2)
    - SM_7020.pdf
  - "Quality Assurance and Quality Control in Laboratory Toxicity Tests"
    - R18-9-A802(B)(5); R18-9-A802(C)(3)
    - SM_8020.pdf
  - "Quality Assurance/Quality Control"
    - R18-9-A802(B)(6); R18-9-A802(C)(4)
    - SM_9020.pdf
  - "Standard Test Methods for Operating Characteristics of Reverse Osmosis and Nanofiltration Devices"
    - R18-9-A802(B)(7); R18-9-F832(C)(4)
    - ASTM-D4194-23.pdf
  - "Contaminant Candidate List 5 - Exhibit 1b - Unregulated DBPs in the DBP Group on CCL 5"
    - R18-9-A802(B)(8); R18-9-F834(C)(2)(c)(i) & (ii)
    - CCL5_DBPs_87_FR_68066.pdf
  - "2018 Edition of the Drinking Water Standards and Health Advisories"
    - R18-9-A802(B)(9); R18-9-E826(D)(4), (5), (6) & (7); R1 8-9-F834(C)(2)(c)(ii)
    - HA_Table - 2018.pdf
  - "Method 1623.1: Cryptosporidium and Giardia in Water by Filtration/IMS/FA"
    - R18-9-A802(B)(11); R18-9-E828(C)(9)
    - EPA Method 1623.1.pdf
  - "Method 1615: Measurement of Enterovirus and Norovirus Occurrence in Water by Culture and RT-qPCR"
    - R18-9-A802(B)(12); R18-9-E828(C)(9)
    - EPA Method 1615.pdf
  - "Characteristic of ignitability"
    - R18-9-A802(B)(13); R18-9-E824(B)(13)(a)

        - 40 CFR 261.21.pdf
    - "Considerations for Direct Potable Reuse Downstream of the Groundwater Recharge Advanced Water Treatment Facility"
        - R18-9-A802(B)(14); R18-9-F832(D)(4)(b)(viii)
        - Consideration_DPR_Downstream.pdf
- General and Specific Authorizing Statutes (R1-6-201(A)(7));
    - 49-104 - Powers and duties of the department and director.pdf
    - 49-203 - Powers and duties of the director and department.pdf
    - 49-211 - Direct potable reuse of treated wastewater; fees; rules.pdf
- Statutes or Rules Referred to in the Definitions (R1-6-201(A)(8));
    - R1_6_201_A_8.pdf
        - 40_CFR_141_201.pdf
        - 40_CFR_Part_141 - 7_1_23.pdf
        - 42_USC_300f_et_seq.pdf
        - 49-201 - Definitions.pdf
        - 49-203 - Powers and duties of the director and department.pdf
        - AAC_Title_18_Chptr_9_Arts_1_2_3.pdf
        - ARS_Title 49 _Chpt_2_ Art_3.pdf
- A.R.S. § 41-1039(B) Governor's Approval
    - WATER Direct Potable Reuse 2nd APPROVAL.pdf

Thank you for your timely review and approval. Please contact Jon Rezabek or Natalie Kilker, Legal Specialists, Water Quality Division, 602-771-8219, 602-771-0358 or rezabek.jon@azdeq.gov, kilker.natalie@azdeq.gov if you have any questions.

Sincerely,



Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY - PERMIT AND COMPLIANCE FEES

PREAMBLE

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

March 5, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-14-101	Amend
R18-14-102	Amend
R18-14-104	Amend
Table 1	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), (7); 49-203(A)(7), (9), (10)

Implementing statute: A.R.S. § 49-211

4. The effective date of the rule:

This rule shall become effective immediately after a certified original of the rule and preamble are filed with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is March 4, 2025.

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):

The rule shall be effective on March 4, 2025. ADEQ selected this date pursuant to A.R.S. § 41-1032(A)(2) in order "to avoid a violation of … state law, if the need for an immediate effective date is not created due to the agency's delay or inaction".

A.R.S. § 49-211 requires ADEQ to, "[o]n or before December 31, 2024 … adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program [A.K.A. - AWP regulatory program], including rules establishing permitting standards and a permit application process."

While an immediate effective date will not avoid a violation of A.R.S. § 49-211, it serves to ameliorate the extent of the violation by establishing an effective date as close in time as possible to the statutory deadline "on or before December 31, 2024". The Legislature charged ADEQ with the adoption of an advanced water purification program in Fall 2022, setting a justifiably aggressive deadline of December 31, 2024. Since that time, ADEQ diligently undertook an extensive program design and rule-writing approach to appropriately design the revolutionary program. Additionally, ADEQ conducted a

special stakeholder approach commensurate with the intricacies of the program, itself, with myriad stakeholder efforts outlined in Section 7 of this Notice of Final Rulemaking. This process included engagement at all phases of the project, in the program framework and guiding principle development phase to the draft rule phase, and included multiple opportunities for ADEQ to work with and educate stakeholders, receive feedback on program components, and improve the program. Arizona is one of only a handful of states with a regulatory framework for advanced water purification, and the process was, therefore, carefully conducted to best preserve the interests of the Legislature and the health of Arizonans. While ADEQ worked just as aggressively to achieve the statutory deadline, best efforts nevertheless fell a few months short. For these reasons and pursuant to A.R.S. § 41-1032(A)(2), ADEQ did not delay or fail to act in such a way that led to the need for an immediate effective date.

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 Proposed Rulemaking: 30 A.A.R. 3243, Issue Date: November 1, 2024, Issue Number: 44, File Number: R24-212.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2878, Issue Date: September 20, 2024, Issue Number: 38, File Number: R24, 176.

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

Name:	Jon Rezabek
	Natalie Kilker
Title:	Legal Specialists
Division:	Water Quality
Address:	Arizona Department of Environmental Quality
	1110 W. Washington Ave.
	Phoenix, AZ 85007
Telephone:	(602) 771-8219
Fax:	(602) 771-2366
Email:	reuserulemaking@azdeq.gov
Website:	https://www.azdeq.gov/awp-rulemaking

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

***Introduction*:**

The Arizona Department of Environmental Quality ("ADEQ") is mandated by the Arizona Legislature, pursuant to Arizona Revised Statutes (A.R.S.) § 49-211, to "establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program" and "adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process". The statute, adopted from House Bill 2861, as enacted in the Second Regular Session on June 28, 2022, became effective on September 24, 2022. For purposes of this Notice and the final rule, the term "direct potable reuse" is synonymous with "Advanced Water Purification" (or "AWP"), as the program is now called.

ADEQ, in consideration of Arizona's water supply needs and the Legislative mandate, interpreted A.R.S. § 49-211 as a call to establish an AWP program that is both protective of human health and the environment, as well as imposing minimum burden upon the stakeholder community in achieving that goal. The result of that effort is detailed in the final rules to be placed in the Arizona Administrative Code (A.A.C.), Title 18, Chapters 1, 5, 9 and 14, through this Notice of Final Rulemaking (NFRM) and through the simultaneously filed associated NFRMs.

***Background*:**

Arizona faces significant water supply challenges requiring proactive approaches to conservation and stewardship, in anticipation of decreased water availability in the future. Arizona is currently experiencing a severe and sustained drought, persisting since 1994. The state has experienced an average annual precipitation of approximately 12 inches, and climate data reveals a concerning trend: a consistent reduction of 0.9 inches of rainfall per year over the past three decades (Arizona State University, 2023, Climate of Arizona, https://azclimate.asu.edu/climate/). As a result of the continuing mega-drought, a Drought Emergency Declaration has existed since 1999. The impacts can be felt heavily in the rural areas of the state, where alternative water supplies are generally very limited and the economy is strongly affected by drought (e.g., grazing, irrigated agriculture, recreation, forestry). Most of rural Arizona relies exclusively on groundwater as its primary water source and lacks the groundwater regulations and conservation requirements which have been present in the state's active management areas (AMAs) and irrigation non-expansion areas (INAs). In addition to the reduced precipitation within Arizona, the Colorado River Basin is also facing decades-long drought conditions, which have led to historically low water levels in Colorado River system reservoirs. As a result, Arizona has implemented measures to reduce its consumption of Colorado River water. The Lower Colorado River Basin first experienced a Tier 1 Shortage as agreed in the 2007 Interim Guidelines and the Drought Contingency Plan in 2021. In 2022, Bureau of Reclamation Commissioner Camille Touton called on the Colorado River states to conserve between 2-4 million acre feet per year to address the critically low levels in Lake Powell and Lake Mead following a dire water year. Fortunately, voluntary reductions in the Lower Basin and a healthy water year 2022 averted a decline to critically low elevations. However, as the Basin States look ahead, climate projections and historical

trends indicate that the Basin is likely to face increasing average temperatures and reduced precipitation in the coming years. Arizonans will likely be called upon to live with further reduced Colorado River supplies for the foreseeable future as the next set of operational guidelines for the Colorado River are finalized.

Beyond the shrinking water supply, economic growth presents water providers with formidable challenges in meeting demand. As water-intensive industries relocate to Arizona, industrial water demands may increase. Furthermore, there may be challenges with maintaining the necessary housing growth due to the release of the new models of groundwater conditions in the Phoenix and Pinal AMAs. The results of the groundwater flow model projections show that over a period of 100 years, the Phoenix AMA will experience 4.86 million acre-feet (maf) of unmet demand for groundwater supplies and the Pinal AMA will experience 8.1 maf of unmet demand for groundwater supplies, given current conditions. In keeping with these findings of unmet demand, the State will not approve new determinations of Assured Water Supply within the Phoenix and Pinal AMAs based on groundwater supplies. This will lead to an increased competition for limited alternative water supplies. As growth continues, there will be an increasing need for sustainable and innovative water resource management strategies to accommodate the state's evolving needs.

***What is AWP*?**

Advanced Water Purification (AWP) is defined as the treatment and distribution of a municipal wastewater stream for use as potable water without the use or with limited use of an environmental buffer (US EPA, 2017, Potable Reuse Compendium). AWP has been shown to be a safe and effective source of potable water over decades of implementation in projects that have been installed worldwide at facilities in Big Spring, Texas (2013); Wichita Falls, Texas (2014); Namibia (1968 and 2002); Singapore (2019); and South Africa (2011) (Lahnsteiner, J., Van Rensburg, P., & Esterhuizen, J., 2018, Direct potable reuse–a feasible water management option. Journal of Water Reuse and Desalination, 8(1), 14-28).

AWP applications typically consist of a conventional water reclamation facility (WRF) or wastewater treatment plant (WWTP) that performs solids, carbon, nutrient, and pathogen removal and an advanced water treatment facility (AWTF) that provides additional pathogen and trace chemical removal. An AWTF is a utility or treatment plant where recycled wastewater is treated to produce purified water to meet specific AWP requirements. AWTFs use a multi-barrier approach where several redundant unit processes in series are installed to treat WRF effluent to potable water standards. Depending on the site-specific infrastructure configuration and treatment capabilities, the AWTF effluent may be introduced into several different locations of the potable water treatment and distribution system to be reused: (i) in the intake to the existing drinking water treatment facility (DWTF); (ii) after the DWTF and prior to the potable water distribution system; or (iii) Directly into the potable water distribution system.

***Evolution of AWP in Regulations*:**

A predecessor to the AWP program was adopted in the A.A.C. in 2018 at R18-9-E701, including a definition of "[a]dvanced reclaimed water treatment facility" at R18-9-A701(1). An associated NFRM filed simultaneously with this NFRM will repeal these rules in their entirety to make way for the AWP program. This prior, less detailed, single-ruled program was placed in Title 18, Chapter 9, Article 7 of the A.A.C. Article 7 is entitled "Use of Recycled Water". Part E of Article 7 was entitled "Purified Water

for Potable Use" and R18-9-E701 was entitled "Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility". R18-9-E701 detailed basic requirements for an advanced reclaimed water treatment facility and, during the rule's tenure, was used to permit one such facility. The facility was not authorized to, and did not, distribute purified water as drinking water through established conveyances or networks. As was stated above, in recent years, the Arizona Legislature determined a need for a more robust regulatory program for AWP. The Legislature passed House Bill 2861 into law in 2022, effectuating statute A.R.S. § 49-211, which led directly to the establishment of the final AWP program and the repeal of the previous program.

***Associated Rulemakings*:**

This final rulemaking includes four NFRMs, adding, repealing or amending rules in A.A.C. Title 18. Environmental Quality:

- Chapter 1 (Department of Environmental Quality - Administration),
- Chapter 5 (Department of Environmental Quality - Environmental Reviews and Certification),
- Chapter 9 (Department of Environmental Quality - Water Pollution Control), and
- Chapter 14 (Department of Environmental Quality - Permit and Compliance Fees).

The final changes to Chapter 1 are specific to updating the Licensing Time-Frame requirements in Article 5 to account for the new AWP program. The final changes to Chapter 5 are specific to amending the Minimum Design Criteria in Article 5 to correspond with the rules in the AWP program which outline the interconnection between AWP and the Safe Drinking Water Act, specifically between AWP permitting and design requirements and those in Article 5, applicable to public water systems. The final additions, amendments and repeals to Chapter 9 are all aimed at making way for and establishing the AWP regulatory program. The final changes to Chapter 14 are specific to updating the Water Quality fees in Article 1 to accommodate the AWP program commensurate with other water quality programs.

***Fees*:**

In accordance with the legislative mandate A.R.S. § 49-211(A), to "establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program", ADEQ, established specific permitting rates in rule that are sufficient for ADEQ to administer the AWP program. Like other similarly situated water programs, Arizona's AWP program follows a fee-for-service model, deriving funding from hourly review rates for permit applications and related components as well as from annual fees. ADEQ believes the costs charged through the program are commensurate with projected costs necessary to adequately support the program, and that the final fees are fairly assessed and impose the least burden possible to parties subject to the fees.

ADEQ is proposing to update the definitions in R18-14-101 to include the "AWP" acronym and scope AWP permit and demonstration permit-related activities into the "Water Quality Protection Service" billing structure, in parallel with other water quality programs. While the existing "Water Quality Protection Service" list captures a majority of the AWP billable activities, such as pre-application and application activities, ADEQ is proposing to add a new billing item for "reviewing and commenting" on AWP permit and demonstration permit materials. This is a unique process in the final program wherein applicants may be required to submit certain plan components to the department, such as their Initial Source Water Characterization Plan, Pilot Study

Plan, and Full-Scale Verification Plan, for review and comment throughout the pre-application period (*see generally* R18-9-C813). ADEQ's review and comment is not a licensing decision, but a method for ADEQ to collaborate with the applicant and provide feedback on foundational permit components at relevant times prior to the AWP permit application.

ADEQ is proposing to amend R18-14-102, by incorporating an AWP hourly fee into subsection (B). The hourly fee is calculated through an accounting of administrative costs such as AWP-specific program needs and salaries for technical staff, administrators, and management. ADEQ is proposing to update Table 1 under R18-14-102 by stating that there are no maximum fees for AWP. This is because the subject matter of the AWP program is vast and complicated, the state of the technology is rapidly changing, and average review times are, as of yet, unknown. ADEQ is proposing an annual fee for AWP permittees in R18-14-104 that aims to offset the direct and indirect administrative costs of the program, including items such as staff salaries and benefits, third-party professional services, staff training, operator certification administration, legal support, compliance, enforcement, database establishment and maintenance, equipment, travel, and other necessary operational expenses directly related to issuing permits and enforcing the requirements of the AWP program. ADEQ consistently utilizes this method to set and amend programmatic fees in water quality programs (*see e.g.* 17 A.A.R. 568 (2011) and 29 A.A.R. 1869 (2023)).

Notably, like other water quality program fees, as of August 4, 2023 (*see* 29 A.A.R. 1870 (2023)), AWP fees are subject to annual Consumer Price Index (CPI) adjustments. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year, available at:

https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS48ASA0,CUUSS48ASA0.

This CPI is a better representation of Arizona's rapidly expanding economy and population than the national CPI.

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:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7

and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment,

increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;

- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program. This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	

	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).	Minimal	
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for

administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets

this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DPR regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the

forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the

specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the

nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant

concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

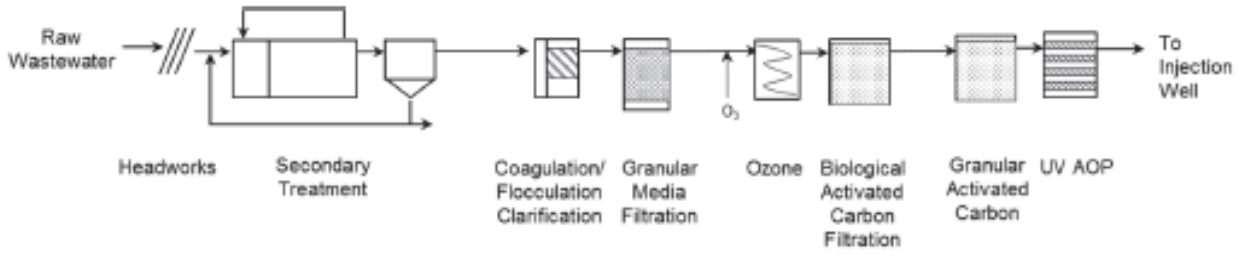
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

WPA - Cost Evaluation - Project 1 Ozone-BAC:

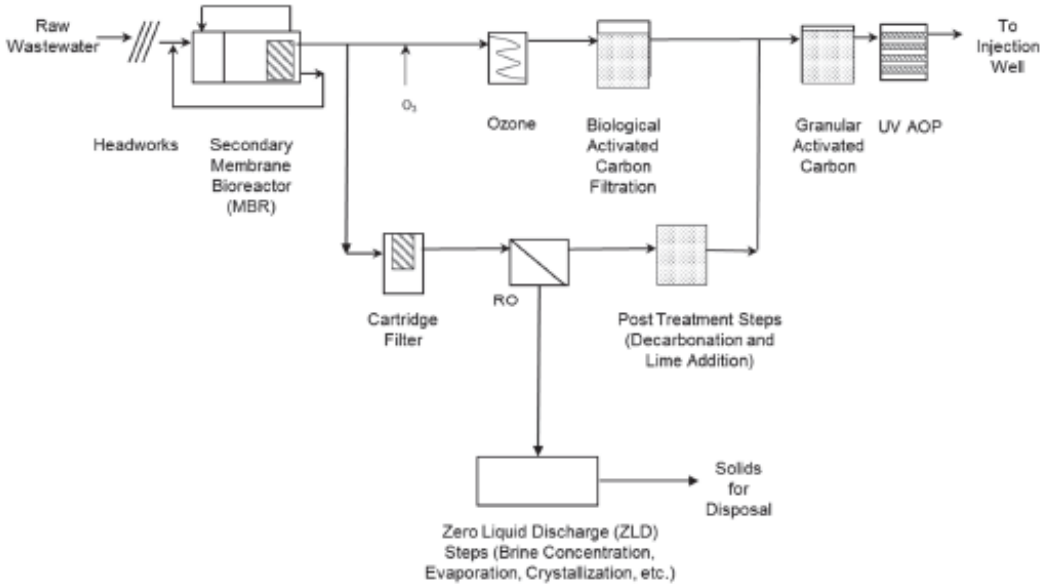
This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

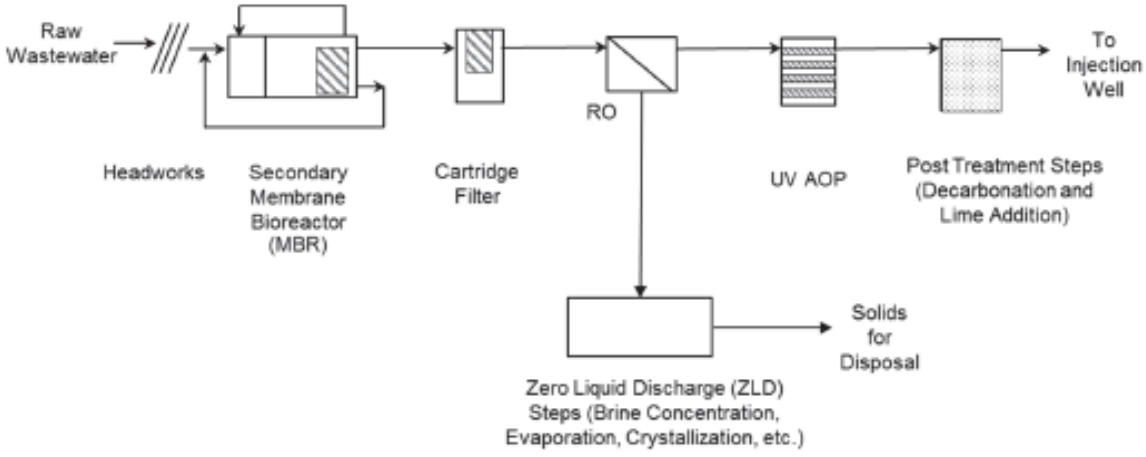
This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved

solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating

WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390
Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do

a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high

quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any

water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse

environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development

might be recognized as an “increase to employment” benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program’s benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA’s other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona’s Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility’s other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the

AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied

water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program. As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs. ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

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

Comment 1: General Public

How many billions of taxpayer money are you going to waste on this project?

ADEQ Response 1:

ADEQ appreciates the comment. AWP is a voluntary program in which water provider agencies may choose to participate in after outreach and collaboration with their customers. Applicants must develop a Public Communications Plan which, among other requirements, ensures the applicant notifies all drinking water consumers of its intention to apply for an AWP permit and maintains communication with consumers throughout all major program phases (*see* R18-9-B811). ADEQ expects water provider agencies to determine whether AWP fits the needs of water customers in their respective service areas and to ensure that there is adequate customer demand, support, and ability to pay for any new Advanced Water Treatment Facility (AWTF).

The AWP program follows a fee-for-service model, deriving funding from applicants and permittees via hourly review rates for permit applications and related components as well as from annual fees. The costs charged through the program are commensurate with projected costs necessary to adequately support the program. The AWP fees are designed and calculated to be fairly assessed, imposing the least burden possible to parties subject to the fees.

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 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:

Yes, this rulemaking establishes the Advanced Water Purification regulatory program, which includes issuing individual permits, pursuant to A.R.S. § 49-211. While the product (advanced treated water or finished water) of an Advanced Water Purification regulatory program facility is substantially the same, the facilities, activities and practices regulated by the program will be substantially different in nature due to the treated wastewater source, a multitude of viable technological process configurations, a swift pace of technological progress in the field and the custom nature of the regulated parties and their circumstances. Moreover, general permits are not "technically feasible" for the Advanced Water Purification regulatory program under A.R.S. § 41-1037(A)(3), and not used in the program.

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:

While the Safe Drinking Water Act (SDWA) (40 USC § 300f *et seq.*) does regulate the treatment and delivery of drinking water from public water systems across the United States, it does not explicitly regulate the treatment of "treated

wastewater" (*see* R18-9-A801) as a source, which is the subject of this final rule. In fact, SDWA only contemplates surface and ground water as sources for public water systems. Some Advanced Water Purification facilities will be considered public water systems for the purposes of the SDWA and regulated in accordance with the SDWA in addition to the final AWP program.

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 rule follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY - PERMIT AND COMPLIANCE FEES
ARTICLE 1. WATER QUALITY PROTECTION FEES

Section

ARTICLE 1. WATER QUALITY PROTECTION FEES

R18-14-101. Definitions

1. "APP" No Change

2. "AWP" means Advanced Water Purification.

~~2~~3. "Complex modification" means:

   a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § 49-241.02(F)(1); and

   b. A revision of an individual Aquifer Protection Permit for a facility within a non-mining sector due to any of the following:

      i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance;

      ii. A new subsurface disposal including injection or recharge, or new wetlands construction;

      iii. Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or

      iv. Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.

~~3~~4. "Courtesy review" means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.

~~4~~5. "Priority review" means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.

~~5~~6. "Request" means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. The Department considers a request made on the date it is received by the Department.

~~6~~7. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.

~~7~~8. "Review-related costs" means any of the following costs applicable to a specific request for water quality protection service:

a. Presiding officer services for public hearings on a permitting decision,

b. Court reporter services for public hearings on a permitting decision,

c. Facility rentals for public hearings on a permitting decision,

d. Charges for laboratory analyses performed during the review, and

e. Other reasonable and necessary review-related expenses documented in writing.

~~8~~9. "Standard modification" means an amendment to an individual Aquifer Protection Permit that is not a complex modification.

~~9~~10. "UIC" means Arizona's Underground Injection Control Program.

~~10~~11. "Water quality protection service" means:

a. Reviewing a request for an APP determination of applicability;

b. Pre-application consultation, issuing, renewing, amending, modifying, transferring, or denying an aquifer protection permit, an AWP permit, an AWP demonstration permit, an AZPDES permit, a UIC permit, a UIC application for an aquifer exemption or an injection depth waiver or a reclaimed water permit;

c. Reviewing supplemental information required by a permit condition, including annual reports and closure for an APP;

d. Performing an APP clean closure plan review;

e. Issuing or denying a Certificate of Approval for Sanitary Facilities for a Subdivision;

f. Registering or transferring registration of a dry well;

g. Conducting a site visit;

h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);

i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;

j. Registering and reporting land application of biosolids; or

k. Pretreatment program review, inspection, or audit.

l. Reviewing and commenting on AWP permit and demonstration permit materials, including but not limited to, materials submitted to the Department pursuant to A.A.C. R18-9-C814, A.A.C. R18-9-C815, and A.A.C. R18-9-F835.

R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services

A. The Department shall assess and collect an hourly rate fee for a water quality protection service, except for APP minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (2) and (3) and A.A.C. R18-9-B906(B), unless a flat fee is otherwise designated in this Article, and UIC minor modifications specified under A.A.C. R18-9-C633(A).

B. Hourly rate fees. The Department shall calculate the fee using an hourly rate of $174, adjusted annually under subsection (D), except for the UIC program, where the Department shall calculate the fee using an hourly rate of $145, and the AWP program, where the Department shall calculate the fee using an hourly rate of $223, both adjusted annually under subsection (D). These rates shall then be multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified in subsection (C), adjusted annually under subsection (D).

C. Maximum fees for a water quality protection service assessed at an hourly rate in Table 1, adjusted annually under subsection (D).

D. The Director shall adjust the hourly rate and maximum fees listed in subsections (B) and (C) every August 1 to the nearest $10, beginning August 4, 2023, by multiplying the hourly rate or maximum fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Table 1. Maximum Fees

Program Area	**Permit Type**	**Maximum Fee**
APP	Individual or area-wide	$285,400
APP	Complex modification to individual or area-wide	$214,050
APP	Clean closure of facility	$71,350
APP	Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be reassigned under A.A.C. R18-1-516):	
	● Maximum fee (cumulative per submittal)	$214,050
	● Modification under A.A.C. R18-9-A211(C)(1) through (3)	No fee
	● Modification under A.A.C. R18-9-A211(C)(4) through (6)	$7,135
	● Modification under A.A.C. R18-9-A211(C)(7), (D)(2)(b) through (i), and (k) through (l)	$21,405
	● Modification under A.A.C. R18-9-A211(D)(2)(a) and (j)	$35,675
	● Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2)	$35,675

APP	For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2).	
	● For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:	$214,050
	● For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:	$142,700
	● For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit's entire compliance schedule is:	$142,700
APP	For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP	$142,700
APP	Determination of applicability	$21,405
APP	Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E)	$21,405
AZPDES	Individual permit for municipal separate storm sewer system	$57,080
AZPDES	Individual permit for wastewater treatment plant (based on gallons of discharge per day)	
	● 3,000 to 99,999	$21,405
	● 100,000 to 999,999	$28,540
	● 1,000,000 to 9,999,999	$42,810
	● 10,000,000 or more	$71,350
AZPDES	Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer	$42,810
AZPDES	Amendment to an individual permit	$17,838

AZPDES	Approval of a new or revised pretreatment program under AZPDES	$14,270
AZPDES	Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable maximum fees
Reclaimed	Reclaimed water individual permit	$45,664
UIC	Area Area Modification / Renewal	$200,000 $150,000
UIC	Classes I, II, III, V Individual Classes I, II, III, V Modification / Renewal	$200,000 $150,000
UIC	Classes VI Individual Classes VI Modification	No Max No Max
AWP	Permit	No Max.
AWP	Demonstration Permit	No Max.
AWP	Significant Amendment / Renewal	No Max.
AWP	Demonstration Permit Significant Amendment / Renewal	No Max.

R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee

A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2, adjusted annually under subsection ~~(E)~~(F).

B. The Department shall assess an annual fee for an AZPDES related water quality protection service subject to an hourly rate fee as listed in Table 3, adjusted annually under subsection ~~(E)~~(F).

C. The Department shall assess an annual fee of $714, adjusted annually under subsection ~~(E)~~(F) for an individual reclaimed water permit.

D. The Department shall assess an annual fee and an annual waste disposal fee as applicable to UIC regulated facilities, subject to an hourly rate fee, as listed in Tables 3.1 and 3.2, adjusted annually under subsection ~~(E)~~(F).

E. The Department shall assess an annual fee of $101,250, adjusted annually under subsection (F), for AWP permits and for AWP Demonstration permits.

~~E~~F. The Director shall adjust the annual fees listed in subsections (A), (B), (C), (D), and (E) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the annual fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers,

Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 14

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

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of a number of new sections, as well as amendments to existing sections, in four (4) chapters in Title 18 of the Arizona Administrative Code (A.A.C.). Those chapters, and the respective articles affected therein, are; Chapter 1, Article 5; Chapter 5, Article 5; Chapter 9, Articles 2, 7 and 8; and Chapter 14, Article 1. The rulemaking is being conducted in order to adopt the Advanced Water Purification (AWP) regulatory program (formerly "Direct Potable Reuse" program) pursuant to statutory mandate at Arizona Revised Statutes (A.R.S.) § 49-211.

Arizona's ongoing issues with water scarcity, combined with real concerns over meeting demand for expanding communities, highlight the need to develop additional sources of water that can meet growing municipal water demands. In response to increasing state water scarcity, the Arizona legislature mandated through A.R.S. § 49-211 that "...the [ADEQ] director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process." As a result, ADEQ has been charged with developing a program that allows for and regulates the advanced treatment of previously treated municipal wastewater to achieve a drinking-water-quality product, providing a new and convenient water source, known as the AWP program.

AWP is an innovative set of water treatment processes applied at an Advanced Water Treatment Facility (AWTF) that directly purify treated wastewater originating from a community's wastewater treatment plant. This AWTF-treated water can then be either delivered to existing Drinking Water Treatment Facilities (DWTFs) for further treatment or blending or distributed directly to a drinking water distribution system. In both cases, the safeguards of the federal Safe Drinking Water Act (SDWA) continue to apply. The AWP program thus offers the potential for a new and sustainable water source that can provide a consistent supply of water for existing users and support Arizona's future population growth and economic development.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include ADEQ, Arizona Water Provider Agencies (WPAs), Municipal governments, WPA customers, the general public, and the Arizona environment, identified, generally, here, and in more detail throughout the rest of the Economic Impact Statement (EIS) below. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the implementation of the AWP regulatory program.

ADEQ is the sole state agency responsible for the implementation and administration of the AWP program. As detailed in this EIS, impacts to ADEQ include the hiring of new staff commensurate with the expanded technical oversight necessary to administer the AWP program. However, the projected future costs to ADEQ will be offset through its fee-for-service model which places the burden for AWP program services on the applicants and permittees through application fees and annual fees, and the overall impact is therefore expected to be moderate. This approach was mandated by the Arizona Legislature through A.R.S. § 49-211, subsection (A), which states, "...[ADEQ] shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater program…" Therefore, the Legislature charged ADEQ with developing and administering the AWP program and required ADEQ to establish fees sufficient to maintain the program. ADEQ's proposed fees, detailed in the Chapter 14 NFRM, were calculated to match the projected costs of the nascent program.

Next, the WPAs that elect to apply for a permit under the AWP program are affected by the capital costs of the AWP investment, increased compliance and monitoring, and ongoing operations and maintenance responsibility. While the expected costs to participating WPAs are expected to be significant, this impact is balanced against both the voluntary and emerging natures of the AWP program. AWP is not mandated for any WPA and financial barriers to entry may be lowered over time as the program becomes more established. Additionally, Municipal governments are not delegated any administration functions of the program but may be impacted given their relationship to the WPAs in their communities. Local governments may be the WPA, and as such, face significant impacts incumbent on any WPA engaged with the AWP program.

Furthermore, WPA customers are directly impacted by the new supply, beneficially through the delivery of the additional water supply to them, and financially through impacts in water rates. Notably, these impacts are only relevant to customers of WPAs that have adopted AWP in their service area. Customers may face higher water rates as a result of AWP, however, the exact costs are not known to ADEQ as the WPA is responsible for setting reasonable rates on a case-by-case basis in consideration of their service area. The general public is generally impacted by the option of a new water supply alternative for communities, providing an overall net increase in water availability for beneficial use such as drinking. Finally, the environment is impacted, beneficially through potential decreased reliance on groundwater and surface water supplies from WPAs using AWP water as a source, but also faces impacts from changes in water use as a result of expanded, potentially lucrative use options such as reduced groundwater discharge or reclaimed water delivery.

Specific Impacts

The entity with the largest expected impact as a result of the AWP regulatory program is the WPAs. This impact is specific to capital costs, operations/maintenance cost, and permitting/compliance costs. Fundamentally the AWP program is intended to be flexible, setting minimum requirements in rule necessary for the protection of human health and the environment and in enough detail to facilitate a performance standard that can be consistently achieved by permittees under the program. However, the program leaves many details and specifics up to the discretion of the Advanced Water Purification Responsible Agency (AWPRA) as they determine what technology, treatment train configuration, etc. is best to address their treated wastewater influent, their contributing non-domestic dischargers, their AWPRA partners, etc. Therefore, the EIS cannot determine, with exact specificity, the impacts to each WPA. However, the EIS provides cost evaluations for three representative AWP projects, in an effort to provide a range of potential options. These three projects represent different treatment trains: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO.

Upon an evaluation of these representative projects, this EIS provides expected costs related to the implementation of AWP for WPAs, enabling them to make informed decisions about whether AWP is a good option for their communities. For project 1, Ozone-BAC, the estimated costs are as follows: capital costs - $208.0 million; annual operations and maintenance costs - $3.3 million. For project 2, Ozone-BAC with Side-Stream RO, the estimated costs are as follows: capital costs - $229.0 million; annual operations and maintenance costs - $8.5 million. For project 3, Full-Stream RO, the estimated costs are as follows: capital costs - $276.0 million; annual operations and maintenance costs - $10.9 million.

Stakeholder Process

All stakeholders identified as entities impacted under this EIS have been subject to the AWP stakeholder engagement process. This process commenced in 2023 with a survey of the general public, a survey of more specific stakeholders, and the establishment of a Technical Advisory Group (TAG) for development of the AWP rules. The TAG consisted of experts and representatives from academia, utilities, regulatory agencies, and engineers and scientists. In combination with the additional stakeholders and conversations with expected applicants (WPAs), this effort was a comprehensive discussion on all programmatic elements, including economic impacts.

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

Recycled water is costly, but for some communities it may be the most cost-effective alternative for new and reliable long-term water supplies. The AWP program will operate uniquely among existing water programs as it will be state-run and has no federal equivalent. This rulemaking establishes rules, including permitting standards and a permit application process, for participating in the AWP program, a voluntary program. The decision to apply for a permit under the AWP program rests entirely with the entity wishing to pursue AWP as an addition to their drinking water portfolio.

While the AWP program is voluntary, there will be costs to each adopting entity for permitting and compliance requirements and infrastructure implementation. There may also be cascading cost impacts to other persons or groups (such as customers), but these costs will be borne throughout the water system and will be discussed in advance with stakeholders by water provider agencies.

ADEQ has identified the following list of affected entities and persons who stand to incur direct impacts and/or costs, but also potentially significant benefits, from this rulemaking:

- Arizona Department of Environmental Quality (ADEQ);
- Arizona Water Provider Agencies (WPAs);
- Municipal governments;
- WPA water customers, both residential and nonresidential;
- General public; and
- Arizona environment.

D. Cost/Benefit Analysis:

Comprehensive assessment of the AWP program requires identification of the program's impacts across affected persons and entities. Future AWP implementation can be expected to result in a range of impacts, both beneficial and adverse, which could include:

- Improvements in water availability throughout the water system;
- Operational changes for WPAs;
- Increased capital and operating and maintenance (O&M) expenses for WPAs;
- Increased rates for water customers;
- Enhanced drought resilience of the water system;
- Potential shifts in water rights allocations; and
- Changes in agricultural water usage.

The nature and magnitude of AWP-related costs and benefits will depend on several key factors related to each entity's AWP technology choice and the approach necessary for its implementation, as well as the context within which future development occurs. As noted previously, the voluntary nature of the AWP program allows entities to choose freely whether to engage with the program and thus evaluate potential cost impacts well in advance of adoption.

This EIS is a program-level assessment that evaluates the general impacts from future AWP implementation through the AWP program. As such, it does not estimate specific impacts for any individual project, as those would inherently require consideration of that project's specific circumstances (e.g. water demand, location, and hydrology) and resource conditions. This EIS acknowledges that each AWP project will have cost increase impacts on both a participating WPA

and its customers, while advising that project-level assessments and precise quantifications of any specific impacts (e.g., water rate increases to customers, additional permitting fees to ADEQ, potential changes in water usage patterns, changes in infrastructure maintenance costs, possible need for additional staff or training, and potential changes in local ecosystems due to altered water flows) were not evaluated as part of this EIS. Nonetheless, this EIS provides a general assessment of the expected cost effects on WPAs and ADEQ from the AWP program.

This section outlines ADEQ's analyses of the expected costs and benefits of this rulemaking, made through consultation with ADEQ staff and AWP subject matter experts (SMEs). Part 1 provides a summary table of the affected stakeholder groups with a description of identified potential AWP program effects, and their corresponding revenue and cost effect findings. Part 2 provides a more detailed discussion of stakeholder impacts, analyses, and findings.

1. Part I - Cost/Benefit Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality (ADEQ)	Increased agency responsibilities for administration, oversight, and management of AWP "fee-for-service" program, in which the State will be reimbursed for most AWP-related costs.	Minimal	
	Initial start-up, implementation, and subsequent program oversight activities may result in non-reimbursed costs to the State.	Moderate	
Water Provider Agencies (WPAs)	Increased compliance and monitoring	Moderate	
	Construction of AWTF and O&M responsibilities.	Substantial	
	Revenue changes from expanded customer base and/or deliveries.		Significant
Municipal Governments (non-WPAs)	Coordination with WPA and other agencies.	Moderate	
	Impact on tax revenue from resulting community expansion.		Significant
B. Customers			
WPA Customers	Impact to user water rates.	Minimal	
	Additional water supply that will allow existing and new business and residential growth.		Moderate
	Impacts upon public health related to water quality.	None identified	None identified
C. General Public			
Arizona Water System	Overall net increase in water availability. Additional water will allow community economic development and growth.		Minimal
	Existing surface water purchases can be diverted to other users or uses.		Moderate
	Groundwater resources can be made available for other users or uses.		Significant
	Diverted wastewater outflow may decrease return flows for downstream users.	Minimal	
Downstream Users	All existing supply commitments will be maintained or renegotiated, however diversion of wastewater outflows for AWP use may impact some downstream users. State environmental and permitting processes will consider and address project-specific cases and conditions. Negative	Minimal	

	impacts to downstream users are thus expected to be minimal (subject to mitigation if necessary).		
D. Arizona Environment/ Ecosystem			
Environmental	Reduced groundwater use and depletion with decreased risks of land subsidence and infrastructure damage.		Significant
	Reduced water outflow from wastewater treatment facilities may result in reduced groundwater recharge.		Minimal
	Reduction in poor quality outflow from wastewater treatment facilities may improve water quality in receiving water body		Minimal

2. Part II - Individual Stakeholder Summaries / Calculations

The following section provides an explanatory discussion of expected AWP costs and benefits to the program's various stakeholders. The section outlines the key factors and analysis used to determine the impact findings reported in Part 1 of Section D, above.

State and Local Government Agencies - ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself required significant staff time for technical review, rule composition, facilitation and evaluation of public input and other necessary tasks. Additionally, ADEQ will incur costs for AWP-related staff expansion and performance of new AWP-associated administrative responsibilities needed to implement and operate the AWP program. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise for a variety of program implementation and oversight roles. These positions will likely include engineers (for design review and compliance of AWP facilities) and non-engineer staff for administrative tasks (e.g., project management, permit writing, operator certification coordination, other program support needs, etc.).

The AWP program's duties and tasks will vary based on the number, type, and phase of WPA participants and it is expected that adequately qualified agency staff may be able to perform several roles. It is expected that the AWP program will grow over time as more utilities seek and implement AWP permits, with permitting and administrative support growing equivalently. Nevertheless, in order to support the administration of the AWP program in the near term, ADEQ plans on hiring 2.5 new full-time employees (FTE). These 2.5 FTEs will be split primarily between permit specialist positions, inspectors, and administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

There will also be costs associated with meeting requirements during the AWP approval and permitting process, which will adhere to all applicable state laws and aim to serve the regulated community while being protective of public health and the environment. ADEQ envisions that this permitting process will function similarly to other ADEQ permitting processes (such as for obtaining Aquifer Protection Permits). The AWP permitting process was developed and will be adopted into the A.A.C. in accordance with rulemaking requirements in the Arizona Administrative Procedure Act.

ADEQ's management and administration of the AWP approval and permitting process will be performed on a "fee-for-service" basis, under which the State will be reimbursed for most AWP-related costs, and thus future ADEQ responsibilities for the AWP program should be achieved with little fiscal cost to the State of Arizona. Instead, as described below, administrative and oversight costs for AWP deployment will be borne initially by WPAs and then ultimately passed on to customers for cost recovery through rate-setting.

Water Provider Agencies (WPAs)

The decision to participate in the AWP program rests entirely with any WPA wishing to pursue AWP as an addition to their drinking water portfolio. For those WPAs choosing to implement AWP, there will be increases in costs, primarily associated with permitting/compliance/regulation, capital investment, and operations. Participating WPAs will incur program-specific regulatory and compliance costs, capital costs for AWTF construction and system integration with their water systems, and additional operations and maintenance (O&M) costs over the long-term. Other additional program-specific regulatory and compliance costs could include permitting, compliance costs to meet new environmental standards, and expenses for regular inspections and audits. As noted previously, WPA-incurred costs will be largely recouped from customers through adjustments in water rates (subject to Arizona Corporation Commission approvals).

Data collected for this EIS aims to provide a representation of the economic impacts expected from implementing AWP technologies in Arizona and includes information from stakeholders working on various aspects of AWP rulemaking. Analysis for this EIS involved the review of key SME opinions solicited by ADEQ to support its development of high-level estimates for projected permitting, compliance, capital, and O&M costs to participating WPAs.

AWP-related costs have been assessed, estimated, and reported "in toto" in many cases, as appropriate. This approach best meets this EIS's purposes of representing and evaluating the overall net economic effects of the final rulemaking by determining the overall total combined costs for the various component cost items. This approach is particularly appropriate for evaluation of O&M and compliance costs, which may be performed by an individual staff person; are likely project-specific; and/or are inter-related or inter-dependent, preventing them from being reliably estimated individually and simply aggregated. Furthermore, a higher-level summary assessment may provide a more appropriate

and reasonable valuation given inherent imprecision estimating costs that are project-specific, numerous, relatively small, and difficult to quantify individually.

While there will be cost increases, the potential exists for AWP technology to cost less than other available alternatives. As a result, participating WPAs may realize a benefit (cost savings) from AWP implementation.

Water Provider Agencies (WPAs) - Implementation Costs

Implementation costs for an AWTF could include: land acquisition, site preparation, purchase, and installation of advanced treatment technologies, system integration with existing water systems, and engineering and permitting. System integration could involve infrastructure upgrades, installation of new pipelines, and development of blending facilities. The AWP program includes considerable flexibility for each participating WPA to select the AWP technology and approach most suitable and cost-effective for its specific circumstances.

In general, the technical requirements of AWP deployment will result in facility designs that will require capital costs related to the development and building of all new required AWP infrastructure. The potential costs of implementing technological enhancements related to AWP processes within existing wastewater infrastructure are discussed below. Key WPA technical requirements for AWP development are also summarized, with additional discussion on this EIS's evaluation approach to, and findings on, expected impacts to participating WPAs. While the detailed technical and design requirements incumbent upon the WPA applicant are detailed in the final rule, the following technical and design capital costs for AWP development and installation will predominantly impact the WPAs.

WPA Implementation Costs - Permitting

The permitting process complies with all relevant state laws, with the dual aim of serving the needs of the regulated community and safeguarding public health and the environment. The fees established in this rulemaking are in direct response to a legislative mandate to ensure that the rule establishes "permit fees sufficient to administer a direct potable reuse of treated wastewater program" with all fees deposited in the water quality fee fund (A.R.S. § 49-211(A)). This structure mimics the fee approach for other Water Quality Division programs, which are self-funded, fee-based programs. Therefore, the objective in setting AWP fees for permittees - the Water Provider Agencies (WPAs) (or Advanced Water Purification Responsible Agencies, i.e. "AWPRAs") - is to fund the program from the regulated entities, who voluntarily undertake participation in the AWP program. While ADEQ is guided by its statutory mandate, ADEQ did analyze other direct potable reuse (DPR) programs within other states. However, upon analysis, ADEQ determined that a comparison of these states provides minimal value to comparing the reasonableness or adequacy of AWP's fees.

Other states with DPR regulatory programs in development that ADEQ analyzed include Texas and Colorado. According to reports between ADEQ and the Colorado Department of Public Health and the Environment (CDPHE), Colorado's DPR regulations are established, but neither the staff, nor the fees to support the program have been fully determined or installed. Despite the installation of the regulations, CDPHE is not yet administering the program because there are no current permittees. Currently, CDPHE is actively working with stakeholders to determine the best way to derive funding for the program. According to reports between ADEQ and Texas (through the Texas Commission on Environmental Quality (TCEQ)), Texas' DRP regulatory program is funded through a combination of federal and state funds and fees. Therefore, TCEQ is not required to recover its full DPR program cost through DPR program fees alone. In fact, according to reports between ADEQ and TCEQ, Texas' DPR program does not currently have DPR-specific fees.

Considering the comparative analysis above and ADEQ's legislatively required financial structure in A.R.S. § 49-211(A), ADEQ believes the fees contained in the final rule (*see* A.A.C. Title 18, Chapter 14, Article 1) are in line with the Legislative mandate and carefully designed to support the administration of the program (*see* Heading No. 7, subheading "Fees" above).

WPA Implementation Costs - Enhanced Source Control

Traditional source control programs are designed to protect wastewater treatment plant infrastructure, collection systems, and receiving water bodies under an existing regulatory framework through the National Pretreatment Program (NPP) of the federal Clean Water Act. Because AWP projects create potable water, directly, without an environmental buffer, the program requires Enhanced Source Control (ESC).

ESC includes the control, elimination, or minimization of "constituents of concern" discharged from non-domestic dischargers into a wastewater collection system. Such constituents of concern include federally-regulated chemicals, AWP-regulated chemicals, and performance-based indicator compounds, which are necessary to eliminate or minimize discharges of constituents of concern into the wastewater collection system that is providing the source water for the Advanced Water Treatment Facility (AWTF) in the AWP project.

ESC measures may result in capital and/or increased O&M costs for wastewater customers in which constituents of concern have been found. The magnitude of the cost increases will vary, but in many cases it is anticipated that simple technology discharge management measures (such as temporary retention tanks and scheduled releases, sand filtration, coagulation/flocculation, or use of activated charcoal) could be effective and relatively low cost.

Additionally, a Pollutant Reduction and Elimination Plan specific to each ESC implementation will need to be developed to build relationships with non-domestic dischargers, increase participation in pollution prevention methods to control release of constituents of concern in the collection system, and educate the public about protecting source water. Additional information regarding the specifics of individual ESC programs can be found in R18-9-E824.

WPA Implementation Costs - Nitrogen Removal

The AWP program recognizes the critical importance of nitrogen removal during the treatment process. Nitrogen, primarily in the forms of nitrate and ammonia, can have significant environmental and health impacts if not adequately managed. The AWP program implements flexible strategies for nitrogen removal, allowing facilities to utilize either wastewater treatment processes at water treatment facilities or advanced treatment technologies at AWTFs. These include: biological nitrogen removal (BNR), which uses bacteria to convert nitrogen from one form to another; membrane bioreactors (MBRs) that combine conventional treatment with membrane filtration; an anaerobic ammonia oxidation process that converts ammonium and nitrite directly into nitrogen gas; ion exchange, which removes nitrogen compounds by exchanging them with other ions; and/or adsorption, where nitrogen-containing compounds adhere to the surface of a solid phase.

The choice of strategy depends on various factors, such as the concentration and form of nitrogen in the wastewater, discharge requirements, available infrastructure and resources, and overall treatment objectives. This dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Advanced Oxidation Process

The Advanced Oxidation Process (AOP) is a cornerstone of the AWP program's treatment strategy under the minimum design criteria of the rule, R18-9-F832. AOPs are designed to generate highly reactive hydroxyl radicals, which effectively oxidize and break down a wide range of organic contaminants. This AWP program mandates the inclusion of an AOP treatment process in all AWTF treatment trains, with specific performance benchmarks, achieved through a selection of one of two available methods. This requirement underscores the program's commitment to addressing contaminants of emerging concern and ensuring the safety and quality of the treated water, and the dual-pathway approach ensures that the specific needs and capacities of different facilities can be met while still achieving the stringent standards required under AWP.

WPA Implementation Costs - Other Technical and Design Requirements

In addition to nitrogen removal and advanced oxidation, the AWP program outlines a comprehensive set of technical and design requirements. These include the establishment of multiple barrier treatments, management of total organic carbon (TOC), and the implementation of robust monitoring and reporting systems. The program also emphasizes the need for full-scale verification testing, corrosion control measures, and cross-connection prevention to maintain the integrity of the water supply.

WPA - Operational, Monitoring, and Compliance (OMC) Costs

Once an AWTF has been built, there will be subsequent operating processes and protocols that will increase annual O&M expenditures for a WPA. Additional O&M costs over the long-term could encompass routine system maintenance, replacement of aging equipment, energy costs, personnel costs for system operation, and monitoring, and expenses for ongoing water quality testing and reporting. It is not anticipated that AWP adoption will have any impact upon non-participating WPAs.

Operating an AWTF involves a variety of costs. These include the cost of energy required to run the facility, the cost of chemicals used in water treatment processes, and the cost of labor for personnel who operate and maintain the facility. Additionally, there are costs associated with the regular maintenance of equipment and infrastructure, as well as the eventual replacement of aging equipment. These costs can vary depending on the size and complexity of the facility, the quality of the source water, and the specific treatment processes used.

WPA - OMC - Annual Labor, Power, Chemicals, Replacement and Maintenance

The annual costs of operating an AWTF include labor, which refers to salaries and benefits for employees who operate and maintain the facility. Labor may include costs for training and professional development. Annual costs also include power, the cost of the electricity needed to run the facility's pumps, treatment processes, and other equipment. In addition, many water treatment processes require the use of chemicals to remove contaminants from the water. The cost of these chemicals can vary depending on the quality of the source water and the specific treatment processes used. Finally, over time, equipment and infrastructure will need to be repaired or replaced. These costs can be significant, especially for larger facilities or those using more advanced treatment processes. Regular maintenance can help to extend the life of equipment and reduce the need for costly replacements. These costs are ongoing and must be budgeted for each year to ensure the smooth operation of an AWTF.

WPA - OMC - Operator Certification

An additional certification will be required for operators of certain AWPRA facilities, including all AWTFs and some water reclamation facilities. Such additional certification will naturally come with training and implementation costs, but will also provide the benefit of improved understanding of AWP technology and operations at the WPA level. Operator certification standards for AWP systems will be required to encompass the specific knowledge, skills and experience to maintain the reliability, resilience, and continual performance of AWP systems and respond adeptly to any system failure. The new certification process will encompass a range of critical elements, including comprehensive coverage of AWP technologies, a deep exploration of source water risks and risk management strategies, proficiency in critical control point methodologies, in-depth knowledge of specific AWP regulatory requirements, and the capability to manage operational responses effectively.

The certification program for AWP operators is similar to that of the existing water and wastewater certifications from the American Water Works Association (AWWA) - California - Nevada Section. This Advanced Water Purification Operator Certification would also focus on specific advanced treatment technologies required for AWP and include general

requirements to define AWP in the broader picture of public health protection, pathogen and pollutant targets, and other issues. WPAs will need to ensure that its operations staff have the necessary knowledge and experience to successfully complete certification.

WPA - OMC - Enhanced Source Control

As described above, ESC involves strategies to prevent or reduce pollutants in the water supply at the source. The costs associated with ESC processes can include monitoring costs for regular testing of water quality, infrastructure costs for construction or upgrade of facilities to prevent contamination, and regulatory compliance costs for adhering to environmental regulations. Additionally, there are costs for education and outreach to inform the public or specific industries about best practices for preventing water pollution, and maintenance costs for upkeep of infrastructure or equipment used for source control.

While these costs can be significant, the benefits of ESC, such as improved water quality, reduced treatment costs, and better public health outcomes, often outweigh the expenses. Costs can vary depending on local conditions, the specific water source, and the nature of potential pollutants. Therefore, a detailed cost/benefit analysis by an AWPRA is often necessary when considering ESC measures.

WPA - OMC - Chemical Monitoring

ADEQ has established a three-tiered monitoring approach to managing regulated chemicals in the treated wastewater at the water treatment facility under the AWP program. Tier 1 includes monitoring of chemicals currently covered under the Safe Drinking Water Act (SDWA); Tier 2 includes AWP-specific contaminants that are not federally regulated but may pose a health concern; and Tier 3 requires performance-based indicators to establish treatment performance. At each tier, robust monitoring is required, resulting in increased O&M costs, which ensures high standards of water quality are maintained for WPA customers and any downstream users/uses.

WPA - OMC - Monitoring and Reporting

Participating in the AWP program will come with increased monitoring and reporting requirements, and associated costs. Beyond costs, however, there will also be considerable benefits from increased monitoring and reporting. First, increased collection of data and technical information will make WPA staff better informed about, and better able to track and measure, the operations and performance of their facilities. Additional collection of water recycling metrics, for instance, can improve operator and manager understandings of their current performance and assist them with adapting and improving, so that they can achieve higher standards and/or greater efficiencies.

Second, improved tracking of performance data and metrics will facilitate comparisons between different AWP systems, enhancing ADEQ's and each WPA's ability to learn and improve future operations. Data reporting to ADEQ by individual WPAs, for instance, will inform and support ADEQ's monitoring and oversight capabilities.

WPA - OMC - Federal and State Compliance

The AWP rulemaking requires participating WPAs to conform with existing EPA guidelines. There are specific EPA compliance requirements in addition to the required chemical monitoring presented above. These include:

- 1. Laboratory Analysis. Laboratories performing analyses must comply with the Health and Safety Code, known as the Environmental Laboratory Accreditation Act. Chemical analysis methods should be approved by the EPA for use in compliance with the SDWA.
- 2. Reporting. AWTFs are required to report analytical results for ongoing compliance monitoring of pathogens and chemicals. Reports must include detail regarding the ESC program, cross-connection incidents, and any other relevant information as per AWP program requirements.

These requirements are part of final program standards that will ensure the protection of public health through the control of both pathogens and chemicals in the AWP process.

WPA - OMC - Additional Agency Compliance

The final regulations for the AWP program require WPAs to adhere to established numerical criteria (such as regulated pollutant concentrations that must not be exceeded to protect water quality and public health, and action level thresholds that necessitate immediate corrective measures). These standards and thresholds, which may include limits on contaminants like nutrients or heavy metals, are set by associated agencies or organizations and are integral to WPA operation.

WPA - OMC - Public Communications

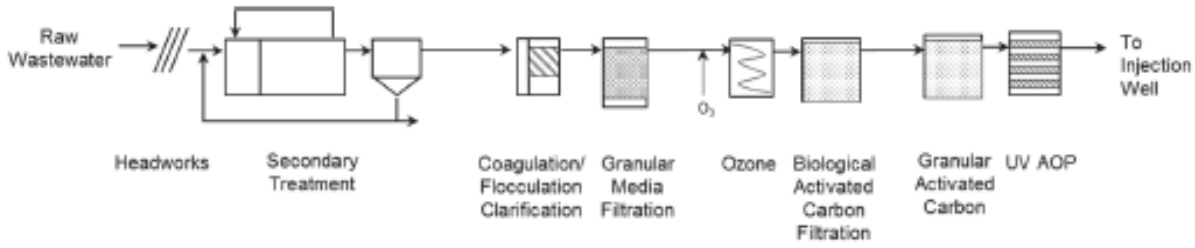
As part of AWP implementation, each WPA and associated partners must develop and implement a "Public Communication Plan" within their service area to notify the public of the possibility of their transition to AWP, address public concerns, build public confidence, and garner public acceptance for AWP (*see* R18-9-B811). Most WPAs already have community relations staff resources allocated for their current water programs, so the level of additional effort required for adequate and successful communication to the public about AWPs will vary between agencies according to their circumstances.

WPA - Cost Evaluation

ADEQ has identified three representative AWP projects for analysis within this EIS, each using a different AWTF treatment train: 1) Ozone-Biologically Activated Carbon (BAC), 2) Ozone-BAC with Side-Stream Reverse Osmosis (RO), and 3) Full-Stream RO. These projects have been selected as they represent a range of treatment options, reflecting the different processes available to meet the diverse needs and capacities of different facilities. This EIS evaluated these representative projects to assess expected costs and benefits of implementing AWP technologies using each of them in Arizona, thereby supporting informed decision-making and strategic planning for water resource management in the state.

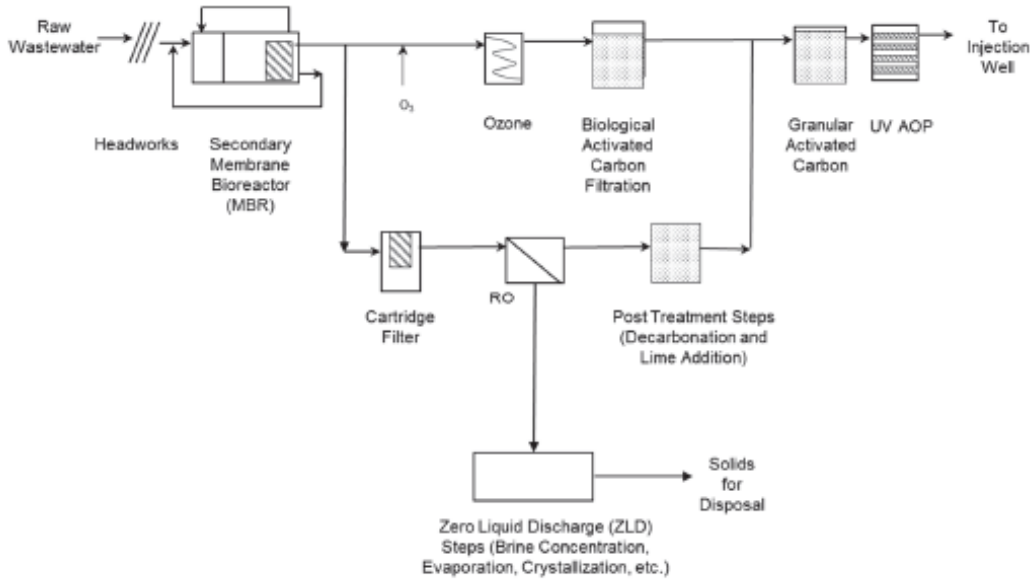
WPA - Cost Evaluation - Project 1 Ozone-BAC:

This train is adapted from injection well potable reuse (PR) projects. The Ozone-BAC process involves the use of ozone for oxidation and biofiltration for organic and microbial contaminant removal but does not significantly reduce the concentration of Total Dissolved Solids (TDS). This train is ideal for applications where the primary concern is the removal of targeted bulk and trace organic contaminants, but not for cases where the TDS of the source water is high and/or TDS reduction is needed to meet purified water quality targets.



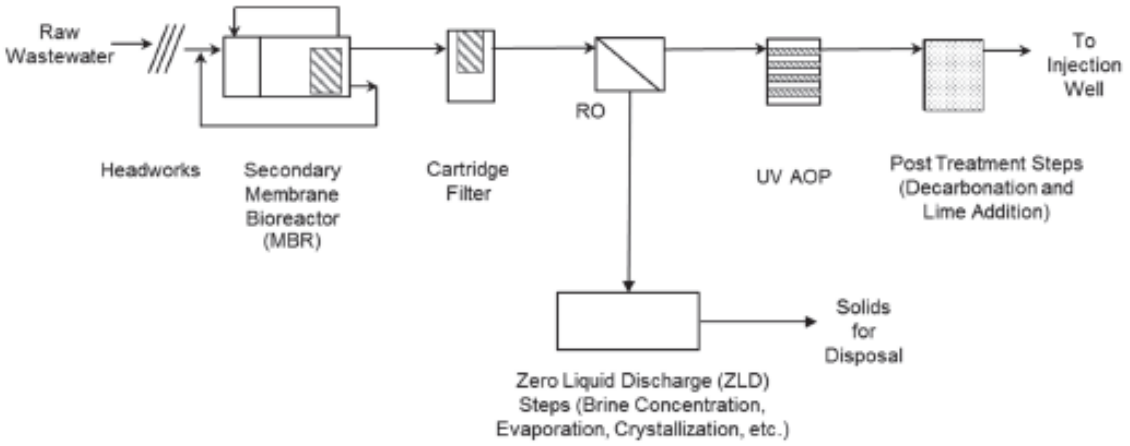
WPA - Cost Evaluation - Project 2 Ozone-BAC with Side-Stream RO:

This train includes a side-stream RO treatment for a portion of the water being treated for enhanced salinity reduction. It is suitable for injection-well PR projects where some salinity must be controlled. The side-stream RO allows for the removal of dissolved solids from a portion of the water, and thus helps to manage overall salinity levels and to reduce project costs by implementing a more targeted approach to RO treatment.



WPA - Cost Evaluation - Project 3 Full-Stream RO:

This train is suitable for injection well PR projects where full-stream reverse osmosis (RO) treatment is required. Full-stream RO treats the entire flow of water, providing comprehensive removal of salts and other dissolved solids. This train is ideal for applications where salinity control is necessary.



WPA - Cost Evaluation - Capital Cost

Capital and O&M costs have been estimated for each of the three representative AWP projects. These high-level "typical" cost estimates are used to derive approximate unit cost estimates to provide "ball-park" representation of the likely costs for participating WPA and its customers. Unit-supplied water values are derived from these estimates to provide an indication of the AWP's potential customer costs and enable cost comparisons with other water supply alternatives, such as desalination.

The cost data developed for the three representative AWP projects include expenditures for AWTF design and construction, required water recovery facility enhancements, an ESC program, and O&M. Together these demonstrate representative costs that a WPA can be expected to incur to develop and operate a typical 6 million gallon per day (MGD) AWTF with an assumed 30-year useful life. Unit costs are presented in constant 2024 dollars and thus do not include any inflation effects. It is also assumed that an AWTF will be funded with low-interest loans (such as federal Water Infrastructure Finance and Innovation Act programs), which, when applied to current 2024-dollar terms, will approximate to a zero (0) percent real interest rate.

The estimated capital costs for the representative projects are shown in the table below.

Representative Project	Project Type	Capital Costs, $M	Annualized Capital Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$208.0	$1,000
Project 2	Carbon Based Advanced Treatment (CBAT) with Sidestream Reverse Osmosis (RO) (a)	$229.0	$1,100
Project 3	Full Reverse Osmosis (RO) with Brine Management	$276.0	$1,400

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

WPA - Cost Evaluation - O&M and Compliance Costs

The estimated annual O&M costs for each of the representative projects are provided in the table below. These costs include labor, materials, equipment repair/replacement and power. Staff costs are based on an estimated average labor cost of $80,000 and $0.20 kWh power cost for operations.

Representative Projects	Project Type	Annual O&M Costs, $M/yr	Annualized Capital + O&M Costs, $/AFY
Project 1	Carbon Based Advanced Treatment (CBAT)	$3.3	$1,520
Project 2	Carbon Based Advanced Treatment (CBAT) w/ Sidestream Reverse Osmosis (RO) (a)	$8.5	$2,390

Project 3	Full Reverse Osmosis (RO) w/ Brine Management	$10.9	$2,990

Note: (a) Assumes sidestream RO of 55% of CBAT flow. AFY is acre feet per year.

In addition, as discussed above, participating WPAs will incur additional monitoring and compliance costs. These activities are recognized as distinct and additional to the duties required of the AWP's operations staff. However, the net cost to the WPA is expected to be relatively minor, as these responsibilities are standard and often periodic. It is estimated that 1 FTE should be able to perform the necessary monitoring and compliance activities.

Regarding ESC, a high-level summary of the estimated costs for implementing a full ESC Program range from 1.25 to 1.5 FTEs. In some cases, WPAs have reported an additional analytical cost of 2 to 3 FTEs necessary for monitoring events. At a full-burdened typical wage cost of approximately $139,000 per year, the estimated implementation cost for a full ESC program would be expected to be in the range of $175,000 to $210,000 per year.

As discussed previously, ADEQ's oversight and administration of the AWP program will be provided on a fee-for-service basis charged to the participating WPA.

Municipal Governments

The future planning of communities in Arizona will likely be dictated by the availability of water resources, from planning for and permitting additional residential and nonresidential growth; to planning for public facilities, such as schools, offices, and correctional facilities. Therefore, municipal governments are an integral component in the process of selecting AWP or another water source alternative. As a result, municipal governments will likely be working with / directing the WPAs when determining the amount of water needed to support the current needs of and projected growth within their communities. Municipal governments will also be indirectly impacted by the AWP program as it plans for and permits residential and nonresidential development.

It is likely that municipal governments will be directly impacted by the AWP program as they support the WPA in evaluating alternatives for new sources of water. One of the major components specific to any ESC requirements for AWTF operations will be the establishment of legal authority, regulatory agreements between agencies, and specific enhanced wastewater management requirements and compliance. Municipal governments will also likely be responsible for implementing the outreach efforts that will explain the AWP selection process to their communities. In addition, municipal governments as water customers will be impacted by any rate increases that occur from AWP implementation. While there will be impacts to municipal governments from AWP, the impacts are not anticipated to be significantly different from the impacts associated with implementing other water source alternatives. If AWP is more cost-effective than other alternatives, there may even end up being greater demand for residential and nonresidential development in AWP-adopting municipalities because of their more affordable water.

Notably, municipal governments may, in fact, be the WPA in their community. In this scenario, the impacts to the municipal government are best revealed through the WPA impact analysis, above, rather than the impact analysis under this section. If a municipal government is the WPA, their expected impacts are significant.

WPA Customers

AWP is not anticipated to have an impact on water customers served by non-participating WPAs. Only AWP water customers will incur increased costs, as they can expect to face higher water rates once WPAs pass on the costs of AWTF development and operations to them. Customers of participating WPAs will, however, also benefit from the greater availability and reliability of the potable quality water supplied through their community's AWP, as described below, especially if their "willingness to pay and use" value exceeds the price charged to them by the WPA to receive the water. Regardless, all user rate increases are the responsibility of each WPA and as such will vary based on specific circumstances. It is, of course, expected that each participating WPA will do a comprehensive analysis before AWP adoption to ensure that there is adequate customer demand, support, and ability to pay for any new AWTF within their service area.

As discussed, participating in the AWP program is voluntary and it is anticipated that WPAs will select the water supply alternative that is the most cost-effective and best meets the needs of its customers. Therefore, if AWP is selected, the rate impacts will likely be less than the impacts of alternative water supplies, thus customers may experience less of a rate impact than if AWP was not available.

WPA Customers - Water Supply Availability

WPA customers will benefit from greater water supply reliability and availability from the additional potable water supplied through AWPs and will enjoy confidence in their WPA's ability to fully meet its service community's current water needs and future demands. Full representation of an AWP's total impact on local water availability should recognize the following water supply improvements:

- Net increase in supplied water: Unlike water purchases and transfers, wastewater recycling will result in "net new" quantities of potable water, as formerly non-potable water discharges are instead treated for municipal and industrial (M&I) consumptive use.
- Increased Supply Reliability: AWP will provide a more sustainable supply option, since its production will not be directly impacted by metrological and/or hydrological conditions.
- Local Control and Supply Flexibility: AWP-served communities will reduce their dependency on imported water and/or existing (often dwindling) groundwater resources. The new water supplies obtained from AWP

development should allow many communities to maintain or improve their groundwater levels and availability.

As noted previously, only the above qualitative considerations of impacts for customers of AWP-participant WPAs have been provided, as rate impact estimations will be highly project-specific and were not evaluated as part of this EIS.

WPA Customers - Water Quality

As one of ADEQ's three (3) environmental divisions, the Water Quality Division (WQD) is responsible for administering the Department's water protection and improvement programs. The WQD protects and enhances public health and the environment by ensuring that healthy drinking water is provided by public water systems, and by controlling current and future sources of surface and groundwater pollution. The Division's programs include, among others, the Safe Drinking Water program, the Groundwater Protection program, and the Recycled Water program.

All recycled water delivered by AWP systems is anticipated to be of equal water quality to existing drinking water supplies due to advancements in AWP technology and the high water quality standards of the SDWA. As a result, future AWP customers are not expected to face any increased public health risks or concerns from AWP, and indeed can expect to enjoy clean water of high quality.

General Public

In addition to the direct impacts to WPAs and their customers, AWP deployment can be expected to have broader impacts on the general public. Direct cost impacts from AWP technology adoption are expected to be predominantly experienced by the agencies, businesses, and individuals connected with AWP operations. However, due to the interconnectedness of Arizona's regional and local water systems, and the scarcity and importance of water within the state, future AWP deployment can be expected to have impacts on the broader populations of residents and businesses within the state and state-wide water resources. Key components and constituencies that would potentially be impacted include the Arizona water system, community economies, the environment, and downstream water users, as described below.

General Public - Arizona Water System

The Colorado River system, which supplies 36 percent of Arizona's total water use, has experienced extensive drought conditions for the past 19 years. Furthermore, it can be expected that climate change may result in even greater long-term reductions in Colorado River supplies. Arizona maintains six Active Management Areas (AMAs), designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Established in 1980, these AMAs cover those areas of the state where significant groundwater depletion has historically occurred. As Arizona heads into a drier future, it is unlikely that its groundwater safe-yield requirements will be reliably met and thereafter maintained in any of the state's AMAs. Groundwater currently provides 41 percent of the state's water, but recent groundwater modeling has projected that over the next 100 years, unmet groundwater demand within the Phoenix AMA will reach nearly 4.9 million acre-feet (MAF), and unmet demand within the Pinal AMA will exceed 8 MAF. Furthermore, in 2022, the Federal Government called upon Arizona and its neighboring Colorado River states to conserve between 2 to 4 MAF per year to address the critically low levels in Lake Powell and Lake Mead.

AWP may thus represent an important supplemental water supply source that can enhance the AMA regions and their local sub-areas' abilities to operate more sustainably. The Arizona water system at large could see significant benefits from this rulemaking by providing WPAs with another option for providing potable water. All Arizona water customers, whether they be serviced by an AWP system or other municipal water system, could benefit from improved water availability and reliability within the state's water system if AWP implementation adds substantial net new water supplies to the state's water system.

General Public - Community Economic Development and Growth

The Arizona Department of Water Resources (ADWR) created the Assured Water Supply Program and the Adequate Water Supply Program to address the concern of limited groundwater supplies in Arizona. The Assured Water Supply Program operates within Arizona's six AMAs and is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. Conversely, the Adequate Water Supply Program operates outside of the AMAs to ensure that water supply adequacy or inadequacy is disclosed in the public report provided to potential home or land purchasers, and that any water supply limitations are described in promotional or advertising material for new developments. Each program has independently verified that current water supply cannot match pace with current projections of population growth and water supply demand.

According to recent data, Arizona witnessed a substantial 12% population increase between 2010 and 2020. Furthermore, more than another one million new people are predicted to take up residence in Arizona over the next decade. At the state's current average water use rate of 146 gallons per day, this projected one million population growth will result in 164 thousand acre-feet of increased residential water demand. New water supplies to meet demand are therefore critically required, and AWP represents an option with considerable potential for supporting the water demands of such anticipated growth and the requirements of the programs. Indeed, in some areas, growth may not be possible without AWP; while in others, AWP may provide the least-costly option for meeting the increased water demand of Arizona's planned development.

Additionally, AWP sourced water also supports future economic development since it can be readily used for a wide variety of purposes and/or locations. In-state surface water supplies, on the other hand, are typically highly location dependent and also subject to water right requirements that may restrict who may use the water where and for what purposes. AWP source water can thus be used to meet Assured Water Supply requirements in sub-basins and areas with insufficient native groundwater to support the future water needs of all proposed development, whether it be residential or commercial. Finally, AWP sourced water may also reduce the demand for future water transfers that reallocate water

supplies from agricultural use for urban customers, which will result in land fallowing and lost agricultural activity.

General Public - Downstream Users

WPA applicants to the AWP program will be required to maintain all previous commitments to downstream water users. WPAs will have to demonstrate that they have the necessary water use rights to divert wastewater supplies for their AWP operations. Use terms and conditions for wastewater outflows will vary between locations and specific utilities. In some cases, dependent ecosystems may formally or informally be recognized as committed water users for wastewater outflows; as such, the impacts to adjacent ecosystems may warrant mitigation. This would be evaluated on a project-specific basis during each AWTF's permit approval process.

Except in cases of contracted use commitments (e.g. non-potable deliveries to the Palo Verde nuclear plant), within most of the state's hydrological systems, wastewater discharge return flow effects and downstream uses are typically limited and not well defined. As a result, potential AWP impacts to downstream users will be project-specific. They are also difficult to estimate and likely outside the WPA's jurisdiction and management authority. As a result, such AWP-related effects were not evaluated as part of this EIS.

Arizona Environment

Current state environmental regulations will evaluate project-specific impacts that may be expected from any proposed AWP development and will recommend appropriate mitigation and/or design changes as necessary to minimize any significant adverse environmental effects. However, in general, the incidental effects from WPAs' discretionary (i.e. uncommitted) current wastewater discharges may be considered to represent indirect and secondary outcomes with lesser relevance/importance than the AWP's direct positive impacts on regional water availability and reliability. AWP recycling of wastewater outflows will not directly affect the state's groundwater resources, since AWP will not result in direct groundwater extraction. AWP may result in some potential indirect groundwater reductions from its diversion of current wastewater outflows. Groundwater conditions within the state could be indirectly impacted, to the extent that current wastewater discharges would normally recharge groundwater aquifers though natural percolation will be diverted by AWP reuse of those water quantities.

AWP may also have a net-positive impact on state groundwater resources by reducing the use of groundwater to meet the state's future water supply needs. It is anticipated that AWP-related groundwater depletion will be less than that which would result from groundwater extraction water supply options designed for either potable use or as new water supply alternatives (e.g. desalination of brackish groundwater). Improved groundwater sustainability can also be expected to result in environmental benefits from reduced land subsidence risks and/or adverse intrusion effects on other aquifers. The economic costs of any such adverse impacts will vary depending on the specific circumstances but will typically represent substantial economic losses to affected properties, and land uses that will be costly to mitigate.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ expects that net direct effect on long-term public or private employment from this rulemaking will result in a minimal or negligible increase. While construction of each new AWTF will result in short-term employment increases for the regional economy, AWP implementation is not anticipated to have direct, long-term impact on local employment. As discussed in Section D, each new AWTF will require a limited increase in operational staff for participating WPAs. Similarly, ADEQ staff necessary for future program oversight and administration will require a relatively small increase in agency staffing. Furthermore, the AWP-related job impacts for both WPAs and ADEQ will likely be similar compared to those that would otherwise be expected from other water supply expansion alternatives (e.g. new brackish desalination).

The extent that any AWP-related increase in employment (both from its construction and subsequent operations) will represent net gains for the region's economy will depend on whether the WPA might otherwise be expected to pursue alternate development of their water system (e.g. new desalination facilities) or would forego system expansion entirely. In either case, the direct net effect on private and public employment within the region's economy would be very small and represent a near negligible change for the region's business sectors and economy.

The potential indirect employment impacts from the AWP, however, could be more substantial if WPAs would otherwise be unwilling or unable to improve their water supplies. Under those circumstances, AWP implementation would be expected to allow future economic growth and development that would otherwise not occur under Arizona's Assured and Adequate Water Supply Programs' requirements. In this case, new employment generated by the increased economic growth and development might be recognized as an "increase to employment" benefit that could, at least in part, be attributed to the AWP.

F. A statement on the probable impact of the rules on small business:

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as "a concern, including its affiliates, which is independently owned and operated; which is not dominant in its field; and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." ADEQ has determined that, for the most part, this rulemaking will not generate a significant and/or disproportionate impact on small businesses. As noted previously, the AWP is a voluntary program that will provide each participating WPA with new opportunities for increasing and improving local water supplies. As such, each WPA can determine whether an AWP program's benefits to its operations and customers will justify investment costs into the program and potential increases in subsequent annual O&M expenses. AWP costs will most directly affect WPAs, with secondary effects on customers (because of improved water availability and

pass-through rate cost impacts). AWP rules are thus anticipated to have only an indirect impact on Arizona small businesses. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers would not be expected to be disproportionately impacted as compared to a WPA's other customers.

1. An identification of the small business subject to the rules:

As discussed above, no small businesses would be directly subject to AWP rulemaking, as it is a voluntary program for WPAs.

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

All administrative and other compliance costs related to the AWP will be directly applicable to ADEQ and the participating WPAs. Any such costs incurred by participating WPAs will have only an indirect cost effect on its customers (residential, business, municipal, and other nonresidential) as approved by the Utilities Division of Arizona's Corporation Commission. Furthermore, in the absence of any differentiation in either the distribution of AWP-related water supply changes or rate charges, small business water customers are not expected to be disproportionately impacted compared to a water utility's other customers.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

In the absence of any direct or disproportionate indirect impacts to small businesses from the AWP, no mitigation measures are necessary to reduce any AWP-related future impacts to small businesses.

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

See Section D for discussion on ratepayer impacts to AWP customers. Note that probable cost effects from future AWP development and implementation will be limited solely to the WPA customers. Accordingly, no cost impacts from future AWP development and implementation to non-participating WPAs would be expected.

G. A statement of the probable effect on state revenues:

AWP implementation will result in increased oversight and administration by ADEQ, as previously discussed. However, the AWP program will operate under the State's fee-for-service model, so that ADEQ-incurred administrative expenses will be recovered from AWP applicant application and permit fees. As a result, no decrease in state revenues should result directly from the AWP program. The AWP program can be expected to result in future increases in state revenues to the extent that its supplemental increases in water delivery and supply improvements should foster economic growth and development that would otherwise not occur. The tax and other economic benefits from the AWP supported growth would represent future indirect and predominantly positive effects on state revenues and economic conditions.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

A.R.S. § 41-1055 requires identification and description of any less intrusive or less costly alternative methods of achieving the AWP regulation's purpose. For any such AWP alternatives, the required description needs to provide: (1) the monetizing of its costs and benefits and (2) the rationale for not using non-selected alternatives. As discussed previously, AWP participation is entirely voluntary and in no way precludes any WPA from instead implementing another approach or water supply resource to meet its water supply needs. This approach thus recognizes that each WPA is the best and most appropriate analyst of, and decision-maker, for its own specific water system needs, resources and alternative supply options.

As such, potential AWP program participants will evaluate their own agency/project-specific circumstances to determine if there are, in fact, less intrusive or less costly alternative methods that would be preferable. Furthermore, the AWP rulemaking's programmatic nature generally precludes any specific project-level determinations of its relative cost or intrusiveness, since any such determination will depend on specific project circumstances as well as implementation approach and design. The cost-effectiveness determination and rationale for any AWTF's development will be the sole responsibility of its WPA and will consequently override and/or negate the applicability of this EIS' alternative methods description requirements.

Generally, brackish groundwater reverse osmosis (BWRO) is considered the primary alternative for obtaining net new water supplies that would match AWP in terms of supply reliability and local control. However, BWRO is likely to be a more expensive alternative, and still comes with its own set of limitations and project-specific circumstances. There is an extensive body of research and analysis on the technical and economic viability of both recycled water and BWRO development. Review of these studies indicates that there is a wide range in the costs of supplied water for these systems, determined by a variety of factors. Several key factors will determine the technical and economic viability of BRWO deployment: (1) groundwater resource conditions, including both supply quantities and salinity levels; (2) pumping depths for extraction; (3) locational proximity to community water systems and conveyance/integration infrastructure requirements; (4) energy consumption; (5) brine by-product waste disposal (either ground injection or treatment for landfill); (6) capital and operational costs; and (7) environmental concerns and impacts from long-term groundwater depletion, subsidence potential and/or effects on neighboring aquifers.

It is also important to note that all else being equal, AWP systems facing salinity issues that require reverse osmosis treatment are likely to have higher supplied water costs, and these may be comparable to those that would be expected for BWRO supplied water.

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

The purpose of this section of the EIS is to identify the data and analysis previously used to develop the AWP program.

As explained throughout this EIS, the AWP program will offer Arizona WPAs new opportunities to develop potable water sources through treatment and recycling of its wastewater outflows. Due to the need for additional water supply options, the Arizona legislature mandated pursuit of the AWP program through A.R.S. § 49-211. As discussed in Section D, the AWP program is entirely voluntary, and its regulations will apply solely to participating WPAs. As a result, non-participating WPAs will not be affected by any AWP requirements. ADEQ has chosen to offer AWP as a voluntary and optional program to place decision-making responsibility for needs determination, cost evaluation and participation on the WPAs who will be responsible for implementing the technology and who best understand how it stands to impact their specific circumstances, and customers' needs.

ADEQ has undergone an extensive and detailed process to develop its AWP regulations. The AWP regulation development has to-date included significant planning and analysis for its formulation. In addition to technical analyses, ADEQ has consulted with WPAs that are considering participating in the AWP program.

Please see Section 7 of this NFRM for a comprehensive overview of AWP regulations, as well as the rationales and data used for the AWP program's design and implementation approach. The various AWP regulatory requirements have generally been developed and adopted to ensure that AWP program implementation fulfills the agency's overall mission to protect and enhance public health and the environment of Arizona. Towards this goal, the AWP program has been developed and designed to conform with ADEQ's guiding principles: i. protective of public health and the environment; ii. community-supported; iii. scientifically-based; iv. reasonably affordable; v. transparent, informative, and communicative; vi. specific, practical, flexible, and implementable; and vii. accounts for future conditions and growth.

The protection of public health and the environment, and the development of a program grounded in hydrological science, are the preeminent guiding principles that are most relevant to AWP program requirements and standards. As such, ADEQ has focused extensively and deliberately on AWP regulations that will ensure the water supply system's proposed technical, design, operational, and compliance regulations address public health concerns, and that public safety is maintained. Without ADEQ's rigorous regulatory guidelines and future oversight, there would be an increased risk of potential public health/safety issues and/or incidents. Due to the complexity of the technical issues and the wide variety of WPA circumstances, extensive regulatory guidance, requirements, safeguards and agency oversight are essential to ensuring that AWP can be a safe, sustainable, and effective new source of potable water for Arizona's water users.

AWP NFRM Public Comments - 18 AAC 14

Comment 1: General Public
How many billions of taxpayer money are you going to waste on this project?

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY - PERMIT AND COMPLIANCE FEES

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: David Lelsz, Ph.D.
Telephone: (602) 771-4651
Email: lelsz.david@azdeq.gov

The release of this Chapter in Supp. 23-3 replaces Supp. 22-3, 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), 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.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY - PERMIT AND COMPLIANCE FEES

Authority: A.R.S. §§ 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)

Supp. 23-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. WATER QUALITY PROTECTION FEES

Article 1, consisting of Sections R18-14-101 through R18-14-108, adopted effective November 15, 1996 (Supp. 96-4).

ARTICLE 2. PUBLIC WATER SYSTEM - DESIGN REVIEW FEES

Article 2, consisting of Sections R18-14-201 through R18-14-202 and Table 1, made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4).

ARTICLE 3. CERTIFIED OPERATOR FEES

Article 3, consisting of Sections R18-14-301 through R18-14-303, made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).

ARTICLE 1. WATER QUALITY PROTECTION FEES

R18-14-101. Definitions

In addition to the definitions in A.R.S. §§ 49-201, 49-241.02, 49-255, 49-331, and A.A.C. R18-9-101, A.A.C. R18-9-701, and A.A.C. R18-9-A901, the following terms apply to this Article:

1. "APP" means an Aquifer Protection Permit.
2. "Complex modification" means:
   a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § 49-241.02(F)(1); and
   b. A revision of an individual Aquifer Protection Permit for a facility within a non-mining sector due to any of the following:
      i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance;
      ii. A new subsurface disposal including injection or recharge, or new wetlands construction;
      iii. Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or
      iv. Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.
3. "Courtesy review" means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.
4. "Priority review" means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.
5. "Request" means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. The Department considers a request made on the date it is received by the Department.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific request for water quality protection service:
   a. Presiding officer services for public hearings on a permitting decision,
   b. Court reporter services for public hearings on a permitting decision,
   c. Facility rentals for public hearings on a permitting decision,
   d. Charges for laboratory analyses performed during the review, and
   e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Standard modification" means an amendment to an individual Aquifer Protection Permit that is not a complex modification.
9. "UIC" means Arizona's Underground Injection Control Program.
10. "Water quality protection service" means:
    a. Reviewing a request for an APP determination of applicability;
    b. Pre-application consultation, issuing, renewing, amending, modifying, transferring, or denying an aquifer protection permit, an AZPDES permit, a UIC permit, a UIC application for an aquifer exemption or an injection depth waiver or a reclaimed water permit;
    c. Reviewing supplemental information required by a permit condition, including annual reports and closure for an APP;
    d. Performing an APP clean closure plan review;
    e. Issuing or denying a Certificate of Approval for Sanitary Facilities for a Subdivision;
    f. Registering or transferring registration of a dry well;
    g. Conducting a site visit;
    h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);
    i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;
    j. Registering and reporting land application of biosolids; or
    k. Pretreatment program review, inspection, or audit.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services

A. The Department shall assess and collect an hourly rate fee for a water quality protection service, except for APP minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (2) and (3) and A.A.C. R18-9-B906(B), unless a flat fee is otherwise designated in this Article, and UIC minor modifications specified under A.A.C. R18-9-C633(A).

B. Hourly rate fees. The Department shall calculate the fee using an hourly rate of $174, adjusted annually under subsection (D), except for the UIC program, where the Department shall calculate the fee using an hourly rate of $145, adjusted annually under subsection (D). These rates shall then be multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified in subsection (C), adjusted annually under subsection (D).

C. Maximum fees for a water quality protection service assessed at an hourly rate in Table 1, adjusted annually under subsection (D).

D. The Director shall adjust the hourly rate and maximum fees listed in subsections (B) and (C) every August 1 to the nearest $10, beginning August 4, 2023, by multiplying the hourly rate or maximum fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year

2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 1. Maximum Fees

Program Area	Permit Type	Maximum Fee
APP	Individual or area-wide	$285,400
APP	Complex modification to individual or area-wide	$214,050
APP	Clean closure of facility	$71,350
APP	Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be reassigned under A.A.C. R18-1-516):	
	▪ Maximum fee (cumulative per submittal)	$214,050
	▪ Modification under A.A.C. R18-9-A211(C)(1) through (3)	No fee
	▪ Modification under A.A.C. R18-9-A211(C)(4) through (6)	$7,135
	▪ Modification under A.A.C. R18-9-A211(C)(7), (D)(2)(b) through (i), and (k) through (l)	$21,405
	▪ Modification under A.A.C. R18-9-A211(D)(2)(a) and (j)	$35,675
	▪ Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2)	$35,675
APP	For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2).	
	▪ For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:	$214,050
	▪ For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:	$142,700
	▪ For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit's entire compliance schedule is:	$142,700
APP	For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP	$142,700
APP	Determination of applicability	$21,405
APP	Reviewing proprietary and other reviewed products under A.A.C. R18- 9-A309(E)	$21,405
AZPDES	Individual permit for municipal separate storm sewer system	$57,080
AZPDES	Individual permit for wastewater treatment plant (based on gallons of discharge per day)	
	▪ 3,000 to 99,999	$21,405
	▪ 100,000 to 999,999	$28,540
	▪ 1,000,000 to 9,999,999	$42,810
	▪ 10,000,000 or more	$71,350
AZPDES	Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer	$42,810
AZPDES	Amendment to an individual permit	$17,838
AZPDES	Approval of a new or revised pretreatment program under AZPDES	$14,270
AZPDES	Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable maximum fees
Reclaimed	Reclaimed water individual permit	$45,664
UIC	Area Area Modification / Renewal	$200,000 $150,000
UIC	Classes I, II, III, V Individual Classes I, II, III, V Modification / Renewal	$200,000 $150,000

UIC	Classes VI Individual Classes VI Modification	No Max No Max

Historical Note
Table 1 adopted by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Table 1 repealed; new Table 1 adopted by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-103. Initial Fees
A person shall submit the applicable fee at the time a request for a water quality protection service is submitted to the Department.

Historical Note
Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee

A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2, adjusted annually under subsection (E).

B. The Department shall assess an annual fee for an AZPDES-related water quality protection service subject to an hourly rate fee as listed in Table 3, adjusted annually under subsection (E).

C. The Department shall assess an annual fee of $714, adjusted annually under subsection (E), for an individual reclaimed water permit.

D. The Department shall assess an annual fee and an annual waste disposal fee as applicable to UIC regulated facilities, subject to an hourly rate fee, as listed in Tables 3.1 and 3.2, adjusted annually under subsection (E).

E. The Director shall adjust the annual fees listed in subsections (A), (B), (C), and (D) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the annual fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note
Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Tables 2 and 3 removed from this Section to conform with the A.A.C. codification scheme; amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 2. APP Annual Registration Fees

Discharge or Influent per Day under the Individual APP or Notice of Disposal (in Gallons)	Annual Registration Fee	Annual Registration Fee if New Facility Under New APP Not Yet Constructed
3,000 to 9,999	$714	$357
10,000 to 99,999	$1,427	$357
100,000 to 999,999	$3,568	$714
1,000,000 to 9,999,999	$8,562	$892
10,000,000 or more	$12,130	$1,070

Historical Note
Table 2 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 3. AZPDES Annual Fees

Permit Type	Annual Fee	Annual Fee if New Facility Under New AZPDES Not Yet Constructed
Municipal separate storm sewer system	$14,270	N/A
Wastewater treatment plant (based on gallons of discharge per day):		
▪ Less than 99,999	$357	$357
▪ 100,000 to 999,999	$714	$714
▪ 1,000,000 to 9,999,999	$3,568	$892
▪ 10,000,000 or more	$5,708	$1,070
Facility or activity that is not a wastewater treatment plant or municipal separate storm sewer and designated in the permit as either:		
Major	$3,568	$892
Minor	$714	$714
Pretreatment program	$4,281	N/A
Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable annual fees of each individual permit	Aggregate of the applicable annual fees of each individual permit

Historical Note

Table 3 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 3.1. UIC Annual Fees

Permit Type	Annual Registration Fee	Annual Waste Disposal Fee
Area	$10,000 (and not subject to any other annual registration fee in Tables 3.1 and 3.2)	N/A
Class I	No Annual Registration Fee	$0.002/gallon. Minimum Fee: $10,000/year Maximum Fee: $25,000/year
Class II	See Table 3.2	N/A
Class III	See Table 3.2	N/A
Class V "Individual"	See Table 3.2	N/A
Class VI	No Annual Registration Fee	$0.08/ton Minimum Fee: $10,000/year

Historical Note

Table 3.1 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Table 3.2. UIC Annual Registration Fees

Design Injection Flow Rate in Gallons per day[1, 2]	Annual Registration Fee
3,000 to 9,999	$600
10,000 to 99,999	$1,200
100,000 to 999,999	$3,000
1,000,000 to 9,999,999	$7,000
10,000,000 or more	$10,000

[1] A Class II, III or V Individual UIC permittee with multiple wells or multiple permits may consolidate their same-class wells for the purpose of "design injection flow rate in gallons per day" under Table 3.2.
[2] An Area permit is not subject to Table 3.2.

Historical Note

Table 3.2 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Schedule A. Repealed

Historical Note

Schedule A adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule B. Repealed

Historical Note

Schedule B adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule C. Repealed

Historical Note

Schedule C adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule D. Repealed

Historical Note

Schedule D adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

R18-14-105. Fee Assessment and Collection

A. Billing. The Department shall bill an applicant for water quality protection services subject to an hourly rate no more than monthly, but at least quarterly. The following information shall be included in each bill:

1. The dates of the billing period;
2. The date and number of review hours itemized by employee name, position type and specifically describing:
   a. Each water quality protection service performed,
   b. Each facility involved and program component, and
   c. The hourly rate for each water quality protection service performed;
3. A description and amount of each review-related cost incurred for the project;
4. The total fees due for the billing period, and the date when the fees are due, which shall be at least 35 days after the date on the bill. The total fees paid to date and the maximum fee for the project shall be provided upon request.

B. Final bill. After the Department makes a final determination whether to grant or deny a request for water quality protection services subject to an hourly rate fee, or when an applicant withdraws or closes the request, the Department shall prepare a final itemized bill of its review.

1. Fees for water quality protection services shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.
2. The Department shall not release the final permit or approval until the final itemized bill is paid in full.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R.

1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-106. Reconsideration of a Bill; Appeal Process

A. A person may seek review of a bill by filing a written request for reconsideration with the Director.
1. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.
2. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice print date, whichever is greater.

B. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

R18-14-107. Effect on County Fees

Nothing in this Chapter affects the authority of county or other local governments to charge fees for implementing delegated Department water quality protection programs in accordance with statutory authority.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

R18-14-108. APP Water Quality Protection Services Flat Fees

A. The Department shall assess a flat fee for an APP water quality protection service listed in this Section.

B. Type 1 General Permits. No fee is required, except as stated in A.A.C. R18-9-A304(A)(2).

C. Fees for Type 2 and Type 3 General Permits and related water quality protection services are listed in Table 4, adjusted annually under subsection (E). For purposes of this Section, "complex" is defined in A.A.C. R18-1-501(9). "Standard" means any permit that does not meet the definition of complex.

D. Fees for Type 4 General Permits and related water quality protection services are listed in Table 5, adjusted annually under subsection (E).

E. The Director shall adjust the APP water quality protection services flat fees listed in subsections (C) and (D) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the APP water quality protection services flat fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 16 A.A.R. 851, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1505, effective July 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Tables 4 and 5 removed from this Section to conform with the A.A.C. codification scheme; amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 4. Type 2 and 3 General Permit Fees

Permit Description	Permit Fee	Renewal Fee
Standard Type 2: 2.01, 2.03, 2.04, 2.05, and 2.06	$2,141	$714
Complex Type 2: 2.02	$4,281	$1,427
Standard Type 3: 3.02, 3.03, 3.05, 3.06, and 3.07	$6,422	$2,141
Complex Type 3: 3.01 and 3.04	$10,703	$3,568
Amendment to Notice of Intent	Same as applicable renewal fee	N/A
Transfer of permit authorization	$71	N/A
If a site contains more than one facility covered by the same Type 2 or Type 3 General Permit and each facility is substantially similar in design, construction, and operation, the first facility is paid at the full applicable fee, and each additional facility is:	Half the applicable fee	Half the applicable fee

Historical Note

Table 4 made when R18-14-108 was amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 in Supp. 11-2. Table 4 was removed from R18-14-108 in Supp. 23-3 to conform with the A.A.C. codification scheme; Table 4 amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 5. Type 4 General Permit Fees

Water Quality Protection Service	Description	Permit Fee

4.01 General Permit: Sewage Collection Systems	Under each Notice of Intent to Discharge, the fee is assessed on a per-component basis for the components listed below and is assessed cumulatively up to the maximum fee:	
	▪ Maximum fee	$35,675
	▪ Force mains with design flow less than or equal to 10,000 gpd	$1,427
	▪ Each additional increment of 50,000 gpd or less of force mains	$1,427
	▪ Gravity sewer with design flow less than or equal to 10,000 gpd	$1,427
	▪ Each additional increment of 50,000 gpd or less of gravity sewer	$1,427
	▪ Each sewer lift station	$1,427
	▪ Each depressed sewer	$1,427
	▪ Realignment of existing sewer for a contiguous project that is less than 300 linear feet with no change in design flow or pipe size	$714
4.01 General Permit courtesy review	If an applicant requests courtesy review, the Department shall approve or deny the request. When determining whether to approve a courtesy review request, the Department shall consider the complexity of the project and the Department's current work load	One-third applicable fee upon submittal, then balance of fee if Notice of Intent to Discharge is submitted with final documentation within 180 days of first submittal
4.23 General Permit: 3,000 to less than 24,000 Gallons per day Design Flow	▪ Onsite wastewater treatment facility with up to: • Three treatment technologies and disposal methods consisting of technologies or designs that are covered under other Type 4 general permits; and • Two onsite wastewater treatment facilities	$5,137
	▪ Maximum fee (cumulative)	$10,703
	▪ Each additional onsite wastewater treatment facility on same Notice of Intent to Discharge up to maximum fee	$1,712
	▪ Each additional treatment technology or disposal method consisting of technologies or designs that are covered under other Type 4 general permits on same Notice of Intent to Discharge up to maximum fee	$714
4.23 General Permit annual report	Annual report required under A.A.C. R18-9-E323(G)	$285
Type 4 General Permits (4.02 through 4.22)	▪ Maximum fee	$5,280
	▪ First Type 4 general permit	$1,712
	▪ Each additional Type 4 general permit on same Notice of Intent to Discharge	$714
Alternative Design under A.A.C. R18-9-A312(G)	A request for an alternative design, installation, or operational feature, per alternative design:	
	▪ Type 4.01 general permit	$1,070
	▪ All other Type 4 general permits	$357
Interceptor under A.A.C. R18-9-A315	A design requiring an interceptor (per interceptor)	$143
Transfer	Transfer of discharge authorization	$71
Priority Review	If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department's current work load.	Double the Applicable Fee (including any applicable maximum fee)

Historical Note

Table 5 made when R18-14-108 was amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 in Supp. 11-2. Table 5 was removed from R18-14-108 in Supp. 23-3 to conform with the A.A.C. codification scheme; Table 5 amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-109. AZPDES Water Quality Protection Services Flat Fees

A. The Department shall assess a flat fee for an AZPDES water quality protection service, as described in Table 6, adjusted annually under subsection (D).

B. In addition to the requirements in A.A.C. R18-9-A907(B), a draft permit will state the category and fee assigned to the permit and the factors for establishing the fee, according to Table 6. Any person may comment on the fee category assignment as part of the public comment period described in A.A.C. R18-9-A908.

C. Annual Fee. The Department shall bill an annual fee, as described in Table 6, adjusted annually under subsection (D), to permittees who have not filed a notice of termination for an applicable general permit.

D. The Director shall adjust the AZPDES water quality protection services flat fees listed in subsections (C) and (D) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the AZPDES water quality protection services flat fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note
New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Table 6 removed from this Section to conform with the A.A.C. codification scheme; amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 6. AZPDES Water Quality Protection Services Flat Fees

Category	Factors for Establishing Fees		Initial Fee	Annual Fee
Municipal Separate Storm Sewer System General Permit	The fee is based on the population of the permitted area:			
	▪ Less than or equal to 10,000		$3,568	$3,568
	▪ Greater than 10,000 but less than or equal to 100,000		$7,135	$7,135
	▪ Greater than 100,000		$10,703	$10,703
	The fee for a non-traditional municipal separate storm sewer system, such as a hospital, college or military facility		$7,135	$7,135
Construction General Permit	The fee is based on the amount of acreage identified in the Notice of Intent:			
	▪ Less than or equal to 1 acre		$357	$357
	▪ Greater than 1 acre but less than or equal to 50 acres		$499	$499
	▪ Greater than 50 acres		$714	$714
	Pollution prevention plan review		$1,427	N/A
	▪ Each additional submittal due to deficiency		$714	N/A
	Waiver		$1,070	N/A
	If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:		Fee applicable to the amount of acreage each person controls	Fee applicable to the amount of acreage each person controls
Multi-Sector General Permit	The fee is based on the amount of acreage identified in the Notice of Intent:			
	▪ Less than or equal to 1 acre		$499	$499
	▪ Greater than 1 acre but less than or equal to 40 acres		$714	$714
	▪ Greater than 40 acres		$1,427	$1,427
	Pollution prevention plan review		$1,427	N/A
	▪ Each additional submittal due to deficiency		$714	N/A
	Certificate of No Exposure		$1,784	N/A
	If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:		Fee applicable to the amount of acreage each person controls	Fee applicable to the amount of acreage each person controls
General Permits for Non-Stormwater Discharges	The fee is based on the Department's total anticipated staff hours (including permit development, customer service, review of the notice of intent, and annual data review and inspections) divided by the total number of potential permittees over a five-year period:			
	▪ Level 1A		$357	$357
	• Staff hours:	1,500		
	• Number of potential permittees:	750		
	▪ Level 1B		$714	$714
	• Staff hours:	1,500		
	• Number of potential permittees:	375		
	▪ Level 2		$1,784	$1,784
	• Staff hours:	1,000		
	• Number of potential permittees:	100		
	▪ Level 3		$2,141	$2,141
	• Staff hours:	1,300		
	• Number of potential permittees:	100		
	▪ Level 4A		$2,854	$2,854
	• Staff hours:	1,600		
	• Number of potential permittees:	100		
	▪ Level 4B		$3,568	$3,568
	• Staff hours:	1,900		
	• Number of potential permittees:	100		
	Pollution prevention plan review		$1,427	N/A
	▪ Each additional submittal due to deficiency		$714	N/A
Emergency Discharge General Permit	Authorization for emergency discharge		$14,270	N/A
Transfer	Authorization for permit transfer as allowed under A.A.C. R18-9-B905		$71	N/A

Biosolids Land Applicators	Initial registration	$714	N/A
	Registration amendment	$357	N/A
	Annual report based on amount of dry metric tons applied		
	▪ Less than or equal to 7,500 dry metric tons	N/A	$3,568
	▪ Greater than 7,500 dry metric tons but less than or equal to 15,000 dry metric tons	N/A	$4,281
	▪ Greater than 15,000 dry metric tons	N/A	$6,422

Historical Note

Table 6 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Table 6 was removed from R18-14-109 in Supp. 23-3 to conform with the A.A.C. codification scheme; Table 6 amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-110. Reclaimed Water Flat Fees

A. The Department shall assess a flat fee for a reclaimed water quality protection service as listed in Table 7, adjusted annually under subsection (B). For purposes of this Section, "complex" is defined in A.A.C. R18-1-501(9). "Standard" means any permit that does not meet the definition of complex.

B. The Director shall adjust the reclaimed water quality protection services flat fees listed in subsections (A) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the reclaimed water quality protection services flat fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 7. Reclaimed Water General Permit Fees

Permit Description	Permit Fee	Renewal Fee
Standard Type 2: Class A, A+, B, and B+	$856	$642
Complex Type 2: Class C	$1,070	$821
Standard Type 3: Reclaimed Water Agent, Reclaimed Water Blending Facility	$2,141	$1,784
Complex Type 3: Gray Water	$2,854	$2,141
Amendment to Notice of Intent	Same as applicable renewal fee	N/A
Transfer of permit authorization	$71	N/A

Historical Note

New Table 7 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-111. UIC Flat Fees

A. The Department shall assess a flat fee for the following UIC regulated facility services, adjusted annually under subsection (B):

1. Well installation in an Area Permit, $200 per well installation.
2. Class V authorization by rule, $200 per well inventory.
3. Class V authorization by rule, $100 per well transfer.

B. The Director shall adjust the UIC regulated facility services flat fees listed in subsections (A) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the UIC regulated facility services flat fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-111 renumbered to R18-14-112; new R18-14-111 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-112. Other Flat Fees

Flat fees. The Department shall assess a flat fee for the following water quality protection services:

1. Certificate of Approval for Sanitary Facilities for Subdivisions.
   a. Subdivision with public sewerage system: $1,142, adjusted annually under subsection (2), for every increment of 150 lots or less;
   b. Subdivision with individual sewerage system:
      i. $714, adjusted annually under subsection (2), for less than 10 lots;
      ii. $1,427, adjusted annually under subsection (2), for greater than 10 lots but less than 50 lots;
      iii. $1,427, adjusted annually under subsection (2), for each additional increment of 50 lots or less.
   c. If water from a central system is not provided to the lot, the fee is one and one-half the applicable fee stated in subsection (3)(a) or (b).
   d. Condominium subdivision: $1,427, adjusted annually under subsection (2), for every increment of 150 units or less.
2. The Director shall adjust the water quality protection services flat fees listed in subsections (1) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the water quality protection services flat fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-112 renumbered to R18-14-113; new R18-14-112 renumbered from R18-14-111 and amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-113. Implementation

The fees in this Article apply on July 1, 2011. For fees related to the AZPDES program:

1. A person shall submit the applicable fee when requesting a water quality protection service as specified in an AZPDES General Permit or in 18 A.A.C. 9, Article 9; and
2. A person is responsible for paying the annual fee for an AZPDES general permit, even if the person filed for coverage before the effective date of these rules.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-113 renumbered to R18-14-114; new R18-14-113 renumbered from R18-14-112 by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-114. Annual Report

By December 1 of each year, the Department shall publish an accounting of Water Quality Fee Fund revenue and expenditure activity for the prior fiscal year.

Historical Note

New Section R18-14-114 renumbered from R18-14-113 by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-115. UIC Fees Review

The Department shall review the revenues derived from the implementation of the UIC program from the date of primacy through June 30, 2025. By September 30, 2025, the Department shall determine the adequacy of the fees in comparison to the relevant data from the time period. The Department shall repeat the review every three years based on the initial review date of June 30, 2025.

Historical Note

New Section R18-14-115 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 2. PUBLIC WATER SYSTEM - DESIGN REVIEW FEES

R18-14-201. Definitions

In addition to the definitions in A.A.C. R18-1-501, and 18 A.A.C. 4, the following terms apply to this Article:

"Design review" means the process for reviewing an application for an Approval to Construct as prescribed in A.A.C. R18-5-505(B).

"Design review service" means all activities related to processing an application for an Approval to Construct, including reviewing, approving, or denying an application, conducting a pre-application meeting or site visit, or other activity required to review an Approval to Construct application.

"Distribution system" has the same meaning prescribed in A.A.C. R18-5-101.

"Priority Review" means a design review service where a license application is reviewed using not more than 50% of the total review time-frame for an Approval to Construct license application.

"Public water system" has the same meaning prescribed in A.R.S. § 49-352(B).

"Licensing time-frame" means a period of time described and defined in A.R.S. Title 41, Chapter 6, Article 7.1, and 18 A.A.C. 1, Article 5.

"Water treatment plant" has the same meaning prescribed in A.A.C. R18-5-101.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4).

R18-14-202. Flat Rate Fees

A. The Department shall assess and collect a flat rate fee for design review services for public water systems.

B. Design criteria for public water systems are specified in 18 A.A.C. 4 and 18 A.A.C. 5.

C. An applicant shall submit public water system design review fees with an application for an Approval to Construct, as specified in 18 A.A.C. 5, Article 5.

D. The flat rate fees for a design review service:
1. Are established in Table 1, adjusted annually under subsection (I), are assessed on a per-unit basis where applicable, and are cumulative unless otherwise specified in this Article;
2. Shall be paid by cash, check, cashier's check, money order, or any other method acceptable to the Department; and
3. Shall be paid in full before the Department issues approval of an application.

E. The Department shall refund 50 percent of the application fee paid by an applicant if, during the administrative completeness review time-frame period, the applicant:
1. Fails to respond in a reasonably timely manner, as set forth in A.A.C. R18-1-507, to a notice of administrative deficiencies requesting additional information under A.A.C. R18-1-503, and the Department denies the application; or
2. Withdraws the application.

F. If an application is denied under A.A.C. R18-1-507 after the end of the administrative completeness review time-frame, the Department shall retain the flat fee paid by the applicant.

G. If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department's current work load. If priority review is approved by the Department, the applicant shall pay the priority review fee specified in Table 1, adjusted annually under subsection (I).

H. State agencies are exempt from all fees imposed under this Article pursuant to A.R.S. § 49-353(A)(2)(b).

I. The Director shall adjust the design review services fees listed in Table 1 every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the design review services fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note
Section made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

Table 1. Design Review Service Fees

Public Water System Design Review Application Types	Fees[1, 2]
Approval to Construct Public Water Supply Distribution System:	
• 150 or fewer service connections	$1,284
• 151 to 300 service connections	$1,998
• 301 to 450 service connections	$2,711
• 451 to 600 service connections	$3,425
• 601 to 750 service connections	$4,138
• Each additional 150 service connections	Add $714
Water Treatment Plants and Blending Plans (including new source approval if applicable):	
• < 0.1 mgd	$2,141
• ≥ 0.1 mgd and < 1 mgd	$2,854
• ≥ 1 mgd and < 5 mgd	$4,281
• ≥ 5 mgd	$7,135
Well (including new source approval if applicable)	$1,784
Storage Tank	$1,142
Booster Pump	$1,142
Main Line Extension	$357
Chlorinators/Disinfection Devices	$357
Extension of Time to Construct[3]	50% of the application fee, not to exceed $714
Priority Review Fee[4]	Double the Standard Fee

[1]Fees are calculated on a per-unit basis; i.e., a separate fee is assessed for each separate storage tank, booster pump, disinfection device, or main line extension.
[2]Fees for each application type are cumulative; an applicant must pay the total of all pertinent fees.
[3]Extensions of time to construct are issued pursuant to A.A.C. R18-5-505(E); the Section states that an Approval to Construct becomes void if construction is not commenced or completed within a specified time period, unless the Department grants an extension of time.
[4]Priority Review Projects require Department authorization prior to filing.

Historical Note
Table 1, Design Review Service Fees, made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

ARTICLE 3. CERTIFIED OPERATOR FEES

R18-14-301. Certified Operator Fees

A. Definition terms from A.A.C. R18-5-101 apply to this Article.

B. The Department shall assess and collect a flat rate fee for a certification or renewal under the operator certification program.

C. A person shall submit the applicable fee when requesting a certification or renewal under 18 A.A.C. 5, Article 1, as described below:

1. An applicant that seeks new certification shall submit a $87 fee, adjusted annually under subsection (D), per certification.
2. An operator that has not held a lower grade level for the required amount of time requests the Department's determination on experience and education in order to be admitted to a higher grade certification examination shall submit a fee of $201, adjusted annually under subsection (D), per application.
3. An applicant that requests a certificate based on reciprocity with another jurisdiction shall submit a fee of $334, adjusted annually under subsection (D), per application.
4. An operator submitting a certificate renewal shall submit a $201, adjusted annually under subsection (D), fee for each certificate. If the operator has multiple certificates, the first certificate is $201, adjusted annually under subsection (D), and each additional certificate with the same expiration date is $67, adjusted annually under subsection (D).

D. The Director shall adjust the certification or renewal fees listed in subsection (C) every August 1, to the nearest $10, beginning August 4, 2023, by multiplying the certification or renewal fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2023. The CPI for any year is the average of the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items published by the United States Department of Labor, as of the close of the 12-month period ending on June 30 of that year.

Historical Note
New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4). Amended by final rulemaking at 29 A.A.R. 1869 (August 25, 2023), with an immediate effective date of August 4, 2023 (Supp. 23-3).

R18-14-302. Fee Assessment and Collection

A. Fees for certification or renewal shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

B. The Department shall not accept a request for a certification or renewal without the appropriate fee.

C. If the Department does not accept an operator certificate renewal form, required according to A.A.C. R18-5-107(B), the certificate expires for failure to renew according to A.A.C. R18-5-108.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).

R18-14-303. Implementation

The fees in this Article apply to any application for a certification or renewal that is submitted on or after July 1, 2016.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).

49-211. Direct potable reuse of treated wastewater; fees; rules

A. On or before December 31, 2024, the director shall establish by rule permit fees sufficient to administer a direct potable reuse of treated wastewater 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.

B. On or before December 31, 2024, the director shall adopt all rules necessary to establish and implement a direct potable reuse of treated wastewater program, including rules establishing permitting standards and a permit application process.

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.

49-203. 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.

E-1.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 11

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 28, Article 11 regarding Behavioral Health Services or the Arizona Long-Term Care System (ALTCS).

In the prior 5YRR for these rules, which was approved by the Council in January 2020, AHCCCS did not propose to take any action.

Proposed Action

In the current report, AHCCCS proposes to amend rule R9-28-1106(A) to to make it more consistent with other rules and statutes by removing references to "ADHS/DBHS" as Division of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (DHS). AHCCCS indicates it has requested an exemption from the rulemaking moratorium from the Governor's Office to begin a rulemaking immediately following the Council's approval of this report in order to make this change. AHCCCS anticipated 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:

AHCCCS indicates the economic, small business, and consumer impact of the Chapter is as it was anticipated in the last 5YRR. There were no proposed changes in the last Five-Year Review. The changes suggested in this 5YRR are merely clarifying, therefore, AHCCCS does not anticipate any economic, small business or consumer financial impact anticipated beyond the existing cost of the agency operations.

Stakeholders include AHCCCS, its members, entities that provide behavioral health services, the ALTCS Contractor, and Tribal Contractor.

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?

AHCCCS indicates the rules impose the least burden and cost to achieve the benefits the rules provide to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it has not received any written criticism 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:

- **R9-28-1106(A):** Reference to "ADHS/DBHS" should be removed as Division of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (DHS).

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 indicate 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?

AHCCCS indicates that the rules are not more stringent than 31 U.S.C. 3729-3733.

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 28, Article 11 regarding Behavioral Health Services or the Arizona Long-Term Care System (ALTCS). AHCCCS indicates the rules are clear, concise, understandable, effective, and enforced as written. AHCCCS proposes to amend rule R9-28-1106(A) to to make it more consistent with other rules and statutes by removing references to "ADHS/DBHS" as Division of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (DHS). AHCCCS indicates it has requested an exemption from the rulemaking moratorium from the Governor's Office to begin a rulemaking immediately following the Council's approval of this report in order to make this change. AHCCCS anticipated 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 28, Article 11;

Dear Ms. Klein

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 11 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 28, Article 11

September 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-2903.01, 36-2932

Specific Statutory Authority: A.R.S. §§ 36-2903.01, 36-2907

2. **The objective of each rule:**

Rule	Objective
R9-28-1101	This rule provides general requirements for behavioral health services.
R9-28-1102	This rule outlines the Arizona Long Term Care Services (ALTCS) Contractor and Tribal Contractor responsibilities.
R9-28-1103	This rule provides the eligibility for covered services by Arizona Health Care Cost Containment System (AHCCCS).
R9-28-1104	This rule explains the general service requirements of behavioral health services.
R9-28-1105	This rule outlines the scope of behavioral health services offered by Arizona Health Care Cost Containment System (AHCCCS).
R9-28-1106	This rule provides the standards for service providers.

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_**

R9-28-1106(A)	Reference to "ADHS/DBHS" should be removed as Division of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (ADHS).

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 economic, small business, and consumer impact of this chapter is as it was anticipated in the last Five-Year Review Report. There were no proposed changes in the last Five-Year Review. The changes suggested in this Five-Year Review Report are merely clarifying, therefore, the Administration does not anticipate any economic, small business or consumer financial impact anticipated beyond the existing cost of the agency operations.

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 prior Five-Year Review Report did not find any need to revise the rules, therefore there was no proposed course of action.

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 31 U.S.C. 3729-3733.

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 11. The Administration anticipates submitting this rulemaking to Council in December 2024.

life style according to applicable Tribal law or custom; and

5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-912. Partial Recovery
AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-913. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-914. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-915. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-916. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-917. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-918. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-919. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims
AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties and assessments.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective June 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 3065, effective September 11, 2004 (Supp. 04-3). Amended by final expedited rulemaking at 30 A.A.R. 928 (May 10, 2024), with an immediate effective date of April 25, 2024 (Supp. 24-2).

R9-28-1002. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

R9-28-1003. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

R9-28-1004. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Repealed effective June 9, 1998 (Supp. 98-2).

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

R9-28-1101. General Requirements
General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

1. Definitions. The definitions in A.A.C. R9-22-1201 and R9-22-101 apply to this Article, in addition to the following definitions:
   "Case manager" means an individual responsible for coordinating the physical health services or behav-

ioral health services provided to a patient at the health care institution.

"Contractor" means an ALTCS contractor or as previously known as program contractor.

"Cost avoid" means the same as in A.A.C. R9-22-1201.

"Intergovernmental agreement" or "IGA" means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-28-1106.

"Tribal contractor" means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

2. Case management. A tribal contractor shall provide case management services to FFS American Indian members living on or off-reservation as delineated in the IGA.
3. Reimbursement. For FFS American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a contractor as specified in this Article.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1102. ALTCS Contractor or Tribal Contractor Responsibilities

A. ALTCS contractor. A contractor shall arrange for behavioral health services to all enrolled members, including American Indian members who are not enrolled with a tribal contractor.

B. Tribal contractor. A tribal contractor shall provide behavioral health services to an American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.

C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:

1. A behavioral health provider to another behavioral health provider,
2. A RBHA or TRBHA to a contractor,
3. A contractor or tribal contractor to a RBHA or TRBHA, or
4. A contractor to a tribal contractor or vice versa.

D. The Administration, a tribal contractor, or a contractor, as appropriate, shall authorize medical necessary behavioral health services for American Indian members.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1103. Eligibility for Covered Services

A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified under Chapter 22, Article 2 and 12.

B. Behavioral health services are covered as specified in Chapter 22, Article 2 and 12.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1104. General Service Requirements

A. Services. Behavioral health services include both mental health and substance abuse services and are subject to the provisions under Chapter 22, Article 2 and 12.

B. Enrollment of American Indian member. The Administration shall enroll an EPD American Indian member with a tribal contractor on a FFS basis if:

1. The member lives on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor, or
2. The member lived on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor

immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.

C. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS American Indian members enrolled with a tribal contractor as delineated in the intergovernmental agreement.

D. Enrollment of American Indian members off-reservation. Except as provided in R9-28-1104(B)(2), an EPD American Indian who resides off-reservation shall be enrolled with an ALTCS contractor to receive behavioral health services, including case management, under R9-28-415.

E. Enrollment of developmentally disabled American Indian member. A developmentally disabled American Indian member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993; amended under an exemption from A.R.S. Title 41, Chapter 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, Chapter 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, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1105. Scope of Behavioral Health Services

Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 8 A.A.R. 933, effective February 12, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1106. Standards for Service Providers

A. Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a contractor.

B. The Administration or a contractor shall cost avoid any behavioral health service claims if the Administration or the contractor establishes the probable existence of first-party liability or third-party liability.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 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, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1107. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1108. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

ARTICLE 12. REPEALED

Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-28-1201. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

ARTICLE 13. FREEDOM TO WORK

Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1301. General Freedom to Work Requirements

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.

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements 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.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. 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 may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 31, Article 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 31, Article 12

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to one (1) rule in Title 9, Chapter 31, Article 12 regarding Behavioral Health Services for the Children's Health Insurance Program.

In the prior 5YRR for these rules, which was approved by the Council in January 2020, AHCCCS did not propose to take any action regarding this rule.

Proposed Action

In the current report, AHCCCS proposes to take no action regarding this rule.

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:

AHCCCS indicates the economic, small business, and consumer impact of this chapter is as it was anticipated in the last 5YRR. There were no proposed changes in the last Five-Year Review and there are no proposed changes in this Five-Year Review.

Stakeholders include AHCCCS, its members, and entities that provide behavioral health services.

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?

AHCCCS reports that no changes were proposed. As such, there is no analysis of the probable benefits and costs to those who are regulated to report.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it has not received any written criticism 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 consistent with other rules and statutes.

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 indicate 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 rules are not more stringent than the corresponding federal law, 42 C.F.R. 438.

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 from AHCCCS relates to one (1) rule in Title 9, Chapter 31, Article 12 regarding Behavioral Health Services for the Children's Health Insurance Program. AHCCCS indicates the rule is clear, concise, understandable, consistent, effective, and enforced as written. As such, AHCCCS does not propose to take any action regarding this rule.

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 31, Article 12;

Dear Ms. Klein

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 31, 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 31, Article 12

September 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2903.01

Specific Statutory Authority: A.R.S. §§ 36-2903.01, 36-2907

2. **The objective of each rule:**

Rule	Objective
R9-31-1201	Provides a cross-reference to R9-22-Article 2 and Article 12.

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 economic, small business, and consumer impact of this chapter is as it was anticipated in the last Five-Year Review Report. There were no proposed changes in the last Five-Year Review and there are no proposed changes in this Five-Year Review.

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 prior Five-Year Review Report did not find any need to revise the rules, therefore there was no proposed course of action.

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:**

There are no proposed changes in this Five-Year Review Report.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___** **No _X__**

The rules are not more stringent than 41 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

There are no proposed changes in this Five-Year Review Report.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1005. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section except:

1. Replace the reference to "Article 2," with 9 A.A.C. 31, Article 2;
2. This Section applies to Title XXI fee-for-service and reinsurance payments.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1006. AHCCCS Monitoring Responsibilities

With the exception of long-term care insurance, the provisions in A.A.C. R9-22-1006 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI liens

The provisions in A.A.C. R9-22-1007 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1008. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1009. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties and assessments.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3). Amended by final expedited rulemaking 30 A.A.R. 929 (May 10, 2024), with an immediate effective date of April 25, 2024 (Supp. 24-2).

R9-31-1102. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

R9-31-1103. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

R9-31-1104. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-31-1201. Requirements

The requirements, services and definitions under Chapter 22, Article 2 and Article 12 apply to behavioral health services provided under this Article.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1202. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1203. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1204. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1205. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5846, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1206. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1207. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5846, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1208. Repealed

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1).

ARTICLE 13. REPEALED

Article 13, consisting of Sections R9-31-1301 through R9-31-1309, repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-31-1301. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

R9-31-1302. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

R9-31-1303. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

R9-31-1304. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

R9-31-1305. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

R9-31-1306. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 3205, effective August 4, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 822, effective April 3, 2004 (Supp. 04-1).

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-3.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2205

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 2

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to six (6) rules in Title 6, Chapter 2, Articles 1 and 2 related to Employment and Training. Specifically, Article 1 relates to General Provisions and Article 2 relates to Employment Services provided by the Department.

The Division of Employment and Rehabilitation Services (DERS) is the division within the Department that is responsible for overseeing the Employment Service program in Arizona. Employment Service is a core program partner of the Workforce Innovation and Opportunity Act (WIOA) and provides placement services for job seekers and labor force recruitment services for employers. The Employment Service program focuses on providing a variety of employment-related labor exchange services including job search assistance, job referral and placement assistance for job seekers, reemployment services to Unemployment Insurance claimants, and recruitment services for employers with job openings.

In the Department's 5YRR approved by the Council in August 2014, the Department indicated it would submit a rulemaking package to amend rules R6-2-101, R6-2-102, R6-2-103, and R6-2-201 to make them clear, concise, understandable, effective, and consistent with state and federal law. However, in the Department's next 5YRR for these rules, approved by the

Council in August 2019, the Department indicated, while it received an exception to the rulemaking moratorium in August 2014 and anticipated filing a Notice of Final Rulemaking within six months, it did not complete this rulemaking due to Department-wide reprioritization that identified higher-priority rulemakings.

In the prior 5YRR approved by the Council in August 2019, the Department reiterated its intention to amend rules R6-2-101, R6-2-103, and R6-2-201 as they contain outdated terms and statutory references. Specifically, the Department indicated the rules reference the Department's Authority Library, Employment Standards Administration (ESA), the Job Training Partnership Act (JTPA), United States Employment Service ("USES"), and America's Job Bank, which no longer exist. The Department also indicated the rules incorporate by reference 29 CFR 29.5, which is outdated. For the same reason, the Department indicated these rules are also inconsistent with current law and are not effective in meeting their objective. However, the Department did not plan to amend rule R6-2-102 at that time, due to a Notice of Proposed Rulemaking issued by the U.S. Department of Labor that would amend 20 CFR 658.410 and 658.411. The Department indicated these amendments to these regulations would require additional revisions to rule R6-2-102. The Department stated it would seek an additional moratorium exception for rule R6-2-102 when the federal regulations were final. The Department anticipated filing a Notice of Proposed Rulemaking by July 2020.

The Department indicates it did not complete the prior proposed course of action in the 5YRR approved by the Council in August 2019. The Department states the previous Governor's Administration did not approve the moratorium exception request until October 29, 2020. Upon approval, the Department indicates its resources were heavily diverted to provide COVID-19 Pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking. The Department also overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders in order to mitigate the number of comments received during the formal comment period, which have the potential to cause additional delays in submitting the Notice of Final Rulemaking to the Council. Additionally, the Department determined that additional rules regarding the statewide apprenticeship program that is overseen by the Department's Arizona Office of Apprenticeship, needed to be added to formally identify the Department as the designated registration agency for the federally prescribed Apprenticeship Program in Arizona in accordance with 29 CFR § 29.13(a)(1). As a result of adding these additional rules, the Department recently completed the informal stakeholder input to ensure these proposed revisions were properly vetted.

Proposed Action

In the current report, the Department proposes to update the rules in Title 6, Chapter 2 to align the rules with the Department's current practices and to bring the Department's rules into compliance with the Wagner-Peyser Act, the Workforce Innovation and Opportunity Act, corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing the Notice of Final Rulemaking with 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:

The Department previously completed an economic, small business, and consumer impact statement on these rules during a 1999 rulemaking. In that report, the Department estimated that the proposed rules would have an "intangible economic, small business, and consumer impact," which has proven to be an accurate assessment of the impact of the 1999 rulemaking. While some of the rules in Chapter 2 are outdated and inconsistent with controlling statutes and regulations, there are no negative economic impacts on consumers or small businesses and the rules continue to be necessary and useful to the public.

The impact statement from 1999 provided information on job seekers and employers served. While the Department continues to report information on job seekers and employers to the U.S. Department of Labor, the definitions and data elements have changed, and thus the numbers cannot be compared. In SFY 2023, the Department provided services to 43,177 job seekers. Employers placed over 16,000 job orders with the Department. The Department also served more than 5,900 apprentices in SFY 2023.

In SFY 2023, operation costs, including administrative costs and services, were approximately $13.6 million. The average program staffing level in SFY 2023 was a full-time employee equivalent of 95 staff.

Stakeholders include the Department, job seekers, employers, and employees.

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?

These rules govern all aspects of the Employment Service Program. 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.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticism of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the following rules are not clear, concise, and understandable:

- **R6-2-101:**
    - The terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.
- **R6-2-102:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.
- **R6-2-103:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.
- **R6-2-104:**
    - The priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.
- **R6-2-201:**
    - The rule lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.
- **R6-2-202:**
    - The rule does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the following rules are not consistent with other rules and statutes:

- **R6-2-101:**
    - The terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.
- **R6-2-102:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.
- **R6-2-103:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.
- **R6-2-104:**

    - The priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.
- **R6-2-201:**
    - The rule lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.
- **R6-2-202:**
    - The rule does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the following rules are not effective in achieving their objectives:

- **R6-2-101:**
    - The terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.
- **R6-2-102:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.
- **R6-2-103:**
    - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.
- **R6-2-104:**
    - The priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.
- **R6-2-201:**
    - The rule lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.
- **R6-2-202:**
    - The rule does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the following rules are not enforced as written:

- **R6-2-101:**
  - The terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.
- **R6-2-102:**
  - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.
- **R6-2-103:**
  - The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.
- **R6-2-104:**
  - The priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.
- **R6-2-201:**
  - The rule lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.
- **R6-2-202:**
  - The rule does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.

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 corresponding federal law, which includes the Wagner-Peyser Act, as amended by the WIOA of 2014, 20 CFR 651 through 654, and 20 CFR 658.400 through 658.424.

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 that A.R.S. § 41-1037 does not apply because none of the rules were adopted after July 29, 2010 nor do they require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to six (6) rules in Title 6, Chapter 2, Articles 1 and 2 related to Employment and Training. The Department indicates these rules are not clear, concise, understandable, consistent, effective, or enforced as written. The Department proposes

to update the rules in Title 6, Chapter 2 to align the rules with the Department's current practices and to bring the Department's rules into compliance with the Wagner-Peyser Act, the Workforce Innovation and Opportunity Act, corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing the Notice of Final Rulemaking with 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

Angie Rodgers
Director

October 24, 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 2, Employment and Training.

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, Governance and Innovation Administration, at (480) 487-7694.

Sincerely,

Nicole Davis

Nicole Davis
Office of General Counsel

Attachments

Department of Economic Security
Title 6, Chapter 2
Employment and Training
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1003 and 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 23-645 and 23-648

2. Analysis of rules:

Rule	Analysis	
R6-2-101	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 Employment and Training 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 terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.*

Rule	Analysis	
R6-2-102	Title:	Complaints
	Objective:	The objective of this rule is to describe the Employment and Training Program's complaint process under 20 CFR 658.400 through 658.416 and is incorporated by reference.

- 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 federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.*

Rule	**Analysis**	
R6-2-103	Title:	Hearings and Appeals
	Objective:	The objective of this rule is to describe the Employment and Training Program's appeals and hearing processes to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws.

- 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 federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.*

Rule	**Analysis**	
R6-2-104	Title:	Policy of Nondiscrimination; Schedule of Services
	Objective:	The objective of this rule is to describe the Department's nondiscrimination policy in the administration of the state employment offices and describes the priority of service to qualified applicants for work.

- 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 priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.*

Rule	**Analysis**	
R6-2-201	Title:	Worker Services
	Objective:	The objective of this rule is to describe services available to a worker, the application process, and procedures for when the Department conducts employment testing.

- 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 lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.*

Rule	**Analysis**	
R6-2-202	Title:	Employer Services
	Objective:	The objective of this rule is to describe the Department's requirements for employers placing a job order, including bona fide occupational qualifications, and how the Department refers workers to a job order.

- 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 does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.*

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:

The Department previously completed an economic, small business, and consumer impact statement on these rules during a 1999 rulemaking. In that report, the Department estimated that the proposed rules would have an “intangible economic, small business, and consumer impact," which has proven to be an accurate assessment of the impact of the 1999 rulemaking. While some of the rules in Chapter 2 are outdated and inconsistent with controlling statutes and regulations, there are no negative economic impacts on consumers or small businesses and the rules continue to be necessary and useful to the public.

The impact statement from 1999 provided information on job seekers and employers served. While the Department continues to report information on job seekers and employers to the U.S. Department of Labor, the definitions and data elements have changed, and thus the numbers cannot be compared. In SFY 2023, the Department provided services to 43,177 job seekers. Employers placed over 16,000 job orders with the Department. The Department also served more than 5,900 apprentices in SFY 2023.

In SFY 2023, operation costs, including administrative costs and services, were approximately $13.6 million. The average program staffing level in SFY 2023 was a full-time employee equivalent of 95 staff.

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 on August 6, 2019, the Department anticipated filing a Notice of Proposed Rulemaking by July 2020. However, the previous Governor's Administration did not approve the moratorium exception request originally submitted on September 9, 2019 until October 29, 2020. Upon approval, the Department's resources were heavily diverted to provide COVID-19 Pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking. The Department also overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders in order to mitigate the number of comments received during the formal comment period, which have the potential to cause additional delays in submitting the Notice of Final Rulemaking to the Council. Additionally, the Department determined that additional rules regarding the statewide apprenticeship program that is overseen by the Department's Arizona Office of Apprenticeship, needed to be added to formally identify the Department as the designated registration agency for the federally prescribed Apprenticeship Program in Arizona in accordance with 29 CFR § 29.13(a)(1). As a result of adding these additional rules, the Department recently completed the informal stakeholder input to ensure these proposed revisions were properly vetted.

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:**

These rules govern all aspects of the Employment Service Program. 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?**

☐ **Yes** ☑ **No**

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 none of the rules were adopted after July 29, 2010, and does not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in 6 A.A.C. 2 to align the rules with the Department's current practices and to address the issues in section 2 of this report. These amendments will bring the Department into compliance with the Wagner-Peyser Act, the Workforce Innovation and Opportunity Act, corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing the Notice of Final Rulemaking with the Council by March 2025.

TITLE 6. ECONOMIC SECURITY

CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY EMPLOYMENT AND TRAINING

(Authority: A.R.S. § 41-1954 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R6-2-101 through R6-2-103, adopted effective December 20, 1994 (Supp. 94-4).

Article 1, consisting of Sections R6-2-101 through R6-2-112, repealed effective December 20, 1994 (Supp. 94-4).

Section
R6-2-101. Definitions
R6-2-102. Complaints
R6-2-103. Hearings and Appeals
R6-2-104. Policy of Nondiscrimination; Schedule of Services
R6-2-105. Repealed
R6-2-106. Repealed
R6-2-107. Repealed
R6-2-108. Repealed
R6-2-109. Repealed
R6-2-110. Repealed
R6-2-111. Repealed
R6-2-112. Repealed

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

Article 2, consisting of Sections R6-2-201 through R6-2-210, adopted effective December 20, 1994 (Supp. 94-4).

Article 2, consisting of Sections R6-2-201 through R6-2-210, repealed effective December 20, 1994 (Supp. 94-4).

Section
R6-2-201. Worker Services
R6-2-202. Employer Services
R6-2-203. Repealed
R6-2-204. Expired
R6-2-205. Repealed
R6-2-206. Repealed
R6-2-207. Repealed
R6-2-208. Repealed
R6-2-209. Repealed
R6-2-210. Repealed

ARTICLE 3. REPEALED

Article 3, consisting of Sections R6-2-301 through R6-2-304, repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

Article 3, consisting of Sections R6-2-301 through R6-2-304, adopted effective December 20, 1994 (Supp. 94-4).

Article 3, consisting of Sections R6-2-301 through R6-2-303, repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS

Article 4, consisting of Sections R6-2-401 and R6-2-402, adopted effective December 20, 1994 (Supp. 94-4).

Article 4, consisting of Sections R6-2-401 through R6-2-409, repealed effective December 20, 1994 (Supp. 94-4).

Section
R6-2-401. Repealed
R6-2-402. Expired
R6-2-403. Repealed
R6-2-404. Repealed
R6-2-405. Repealed
R6-2-406 Repealed
R6-2-407. Repealed
R6-2-408. Repealed
R6-2-409. Repealed

ARTICLE 5. RESERVED

ARTICLE 6. REPEALED

Article 6, consisting of Sections R6-2-601 through R6-2-620, repealed effective July 30, 1993 (Supp. 93-3).

ARTICLE 1. GENERAL PROVISIONS

R6-2-101. Definitions

The following definitions apply to this Chapter:

1. "America's Job Bank" means a nationwide computer database linking more than 1800 local Employment Service offices. The services of America's Job Bank are available to job seekers and employers via the Internet.
2. "Applicant" means a person who has applied to the Department for worker services and who is a United States citizen or a non-citizen who is legally authorized to work in the United States.
3. "Apprentice" means a worker who is at least age 16 if a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship that meet the requirements of 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
4. "Apprenticeship agreement" means a written agreement between an apprentice and an employer or a committee acting on behalf of the employer, containing the terms and conditions for employment of the apprentice.
5. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.
6. "Apprenticeship program registration" means the acceptance and centralized recording of an apprenticeship program by the ESA that meets the basic standards and requirements established for apprenticeship programs under federal law.
7. "Apprenticeship program sponsor" means a person, association, committee, or organization operating an apprenticeship program and in whose name the program is registered and approved.
8. "BFOQ" or "bona fide occupational qualification" means a finding by an employer that age, sex, national origin, or religion is a characteristic necessary to an individual's ability to perform the job.
9. "Department" means the Arizona Department of Economic Security.
10. "DOT" or "Dictionary of Occupational Titles" means the reference work published by the United States Employ-

ment Service, which contains brief, non-technical definitions of job titles, distinguishing numeric codes, and worker trait data.

11. "Disabled veteran" means:
    a. A veteran who is entitled to compensation under laws administered by the United States Secretary of Veterans Affairs, or
    b. A person who is discharged or released from active military duty because of a service-connected disability.
12. "Employer job referral services" means Department activities that help an employer obtain workers with the occupational qualifications needed by the employer.
13. "Employment counseling" means formulation of a vocational plan that is consistent with a person's vocational skills and interests, and advice on appropriate measures for implementation of that plan.
14. "Employment test" means a standardized method or device for measuring a person's possession of, interest in, or ability to acquire job skills and knowledge.
15. "ESA" or "Employment Security Administration" means the administrative unit within the Department's Division of Employment and Rehabilitation Services with responsibility for all worker and employer services.
16. "Essential functions of a job" means the fundamental job duties of a particular employment position.
17. "Geographic labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between geographical areas.
18. "Industrial analysis services" means Department activities to assist employers and labor organizations in determining the cause of worker resource problems in a particular business, and provision of information developed by the USES for resolving such problems.
19. "Job bank" means a computerized list of all currently available jobs and employment opportunities listed with the Department.
20. "Job development" means the process by which the Department obtains a job or interview with an employer for a specific applicant for whom the local ESA office has no suitable job opening on file.
21. "Job order" means a request by an employer for the referral of job seekers made available to job seekers via the Department's Job Bank.
22. "JTPA" means the federal Job Training Partnership Act found at 29 U.S.C. 1501 et seq.
23. "Labor market area" means a geographic area consisting of a central city, or group of cities, and the surrounding territory within a reasonable commuting distance.
24. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
25. "Occupational labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between occupations and industry types.
26. "Older worker" means a person age 40 or older who is working or who is unemployed and wishes to work.
27. "Person with a disability" or "disabled worker" means a person who:
    a. Has a physical or mental impairment that substantially limits 1 or more of that person's major life activities;
    b. Has a record of such an impairment; or
    c. Is regarded as having such an impairment.
28. "Physical or mental impairment" means:
    a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting 1 or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
    b. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
29. "Placement" means that a public or private employer has hired an applicant that the Department referred to the employer for a job or interview.
30. "Qualified worker" means a worker who possesses the skills, knowledge, and abilities to perform the essential functions of a job.
31. "Reasonable accommodation" means a modification of, or an adjustment to a process, position, or term of employment, that will permit a disabled worker to enjoy the same benefits and privileges of employment as those enjoyed by persons without disabilities.
32. "Substandard work order" means a work order:
    a. Containing employment terms that violate employment-related laws, or
    b. Offering work at wages or conditions that are substantially inferior to those generally prevailing in the labor market area for the same or similar work.
33. "Substantially limits" when used in reference to a disability, means:
    a. Unable to perform a major life activity that the average person in the general population can perform; or
    b. Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
34. "Targeted jobs tax credit" means an income tax credit available to businesses that hire persons whom ESA has certified as meeting certain criteria described in 26 U.S.C. 51 (Office of the Federal Register, National Archives and Records Administration, August 10, 1993), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
35. "USES" means the United States Employment Service, which is the unit in the United States Department of Labor's Employment and Training Administration designed to promote a national system of public job service offices.
36. "Veteran" means a person who served in the active military service, and who was discharged or released from service under conditions other than dishonorable.
37. "Vocational plan" means a plan developed jointly by an ESA counselor or counselor-trainee and an applicant that describes:
    a. The applicant's short-range and long-range occupational goals, and
    b. The actions to be taken to implement the plan.

38. "Worker" means a U.S. citizen or a non-citizen who is legally authorized to work in the United States and who is employed or who is unemployed and wishes to work.
39. "Worker services" means the functions the Department performs for the benefit of applicants and workers, including employment counseling, employment testing, preparation of a vocational plan, and referral for employment opportunity.
40. "Worker job referral services" means Department activities to help a worker promptly obtain a job for which the worker is occupationally qualified.
41. "Youth worker" means a worker younger than age 22.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-102. Complaints
The Department shall process all complaints related to the provision of employment services under 20 CFR 658.400 through 658.416 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-103. Hearings and Appeals
The Department shall conduct any hearing or appeal to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws, and 20 CFR 658.417 and 658.418 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-104. Policy of Nondiscrimination; Schedule of Services
In the administration of the state employment office, the Department shall:

A. Not discriminate against any applicant or employer because of age, race, sex, color, religious creed, national origin, disability or political affiliation or belief unless a BFOQ exists;

B. Actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications; and

C. Use the following priority schedule to select and refer qualified applicants for work:
1. Disabled veteran applicants;
2. Other veteran applicants;
3. Other applicants.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4). New Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-105. Repealed

Historical Note
Adopted effective September 24, 1974 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-106. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-107. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-108. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-109. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-110. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-111. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-112. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

R6-2-201. Worker Services

A. As permitted by available resources, the Department shall provide services to a worker who is a United States citizen or a

non-citizen authorized to work in the United States. The services include but are not limited to the following:
1. Employment counseling;
2. Aptitude testing;
3. Apprenticeship training; and
4. Job referral services.

B. A worker applying for services shall file an application with the Department. The application shall include the worker's:
1. Name, address, telephone number, social security number, and date of birth;
2. Prior work experience, including information on salary, job duties, and any past military service;
3. Educational background, including technical or other vocational training the worker has completed;
4. Career goals, hobbies, and volunteer work;
5. Availability for work, including a willingness to travel or relocate, desire for full or part-time employment, and desired working hours; and
6. Special skills or proficiencies, including a language other than English or the use of equipment.

C. The Department shall obtain information about a worker's disability as is necessary to provide the worker with appropriate services. This information may include asking the worker whether the worker can perform the essential functions of a particular job, with or without reasonable accommodation.

D. When the Department conducts employment testing, the Department shall:
1. Use only standardized tests and techniques approved by the United States Employment Service; and
2. Not release the results of the tests without the written consent of the tested worker.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-202. Employer Services

A. The Department shall require the following information from an employer who places a job order:
1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications a worker needs to satisfactorily perform the work, with or without reasonable accommodation;
2. An employer's hiring requirements, including the type of license or certification needed, or the type of equipment or tools the worker must supply;
3. The terms and conditions of work, including hours, salary, benefits, promotional opportunities, and travel requirements;
4. The job location and instructions for arranging a job interview.

B. The Department shall refer workers to the employer who most closely match the requirements in the job order. If qualified workers are not available from the Department's files and, if resources are available, the Department shall recruit qualified workers to fill the employer's order.

C. The Department shall not accept a job order from an employer for processing if:
1. The employer's requirements are discriminatory based on age, sex, national origin, or religion, unless the discriminatory characteristic is a bona fide occupational qualification necessary to perform the job. An example of a bona fide occupational qualification that is not discriminatory is the requirement for a female worker in a female intimate apparel retail outlet.
2. The terms and conditions of work are substandard under A.R.S. § 23-776(C)(2).
3. The position is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
4. A worker is required to pay a fee for the job.

D. If an employer refuses to modify a job order deemed unacceptable by subsection (C), the Department shall notify the employer in writing of discontinuance of services. The notification shall include the employer's right of appeal.

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-203. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 16 A.A.R. 510, effective March 2, 2010 (Supp. 10-1).

R6-2-204. Expired

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2615, effective June 30, 2014 (Supp. 14-3).

R6-2-205. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-206. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-207. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-208. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-209. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-210. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

ARTICLE 3. REPEALED

R6-2-301. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Former Section R6-2-301 repealed, new Section R6-2-301 adopted effective May 2, 1978 (Supp. 78-3). *Apprenticeship Program Handbook* amended effective August 8, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-302. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-303. Repealed

Historical Note
Adopted effective September 24, 1975 (Supp. 75-1). Amended effective May 6, 1976 (Supp. 76-3). Amended effective August 1, 1979 (Supp. 79-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-304. Repealed

Historical Note
Adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS

R6-2-401. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-402. Expired

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective October 31, 2004 (Supp. 05-1).

R6-2-403. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-404. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4.). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-405. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-406. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-407. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-408. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-409. Repealed

Historical Note
Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 5. RESERVED

ARTICLE 6. REPEALED

R6-2-601. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5). Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-602. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5). Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-603. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5). Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-604. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-605. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-606. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-607. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-608. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-609. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-610. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-611. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-612. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-613. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-614. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-615. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-616. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-617. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-618. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-619. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-620. Repealed

Historical Note
Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1954. 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.

23-645. State-federal cooperation

In the administration of this chapter, the department shall:

1. Cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter;

2. Take such action as may be necessary to secure to this state and its citizens all advantages available under the provisions of the social security act that relate to unemployment compensation, the federal unemployment tax act, the Wagner-Peyser act and the federal-state extended unemployment compensation act of 1970;

3. Comply with the regulations prescribed by the United States department of labor relating to the receipt or expenditure by this state of money granted under any of such acts; and

4. Make such reports, in such form and containing such information as the secretary of labor may from time to time require and comply with such provisions as the secretary of labor may find from time to time necessary to assure the correctness and verification of such reports.

23-648. Manpower services

A. There shall be established and maintained by the department free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of Congress entitled "an act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" approved June 6, 1933.

B. The provisions of the act of Congress, as amended, referred to in subsection A, are accepted by this state in conformity with section 4 of such act, and this state will observe and comply with the requirements thereof.

C. The department is designated and constituted the agency of this state for the purpose of the act of Congress, as amended, referred to in subsection A. The department shall cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and shall do and perform all things necessary to secure to this state the benefits of that act, as amended, in the promotion and maintenance of a system of public employment offices.

D. The department shall not engage in any activity under this section not prescribed by federal or state law or federal regulation.

E. The department shall not participate or engage in radio, television or newspaper advertising of specific job openings unless prescribed pursuant to federal law.

E-4.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 5, Article 52

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 5, Article 52

Summary

This Five Year Review Report (5YRR) from the Department of Economic Security (Department) relates to twenty-eight (28) rules in Title 6, Chapter 5, Article 52 regarding the Certification and Supervision of Family Child Care Home Providers.

In the prior 5YRR for these rules, which was approved by the Council in August 2019, the Department did not propose any changes to the rules.

Proposed Action

In the current report, the Department proposes to update the rules in Title 6, Chapter 5, Article 52 to bring the Department in compliance with the Child Care and Development Block Grant Act of 2014 and corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing a Notice of Final Rulemaking with the Council by June 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 previously completed an Economic, Small Business, and Consumer Impact Statement on these rules during a final rulemaking approved by GRRC on October 4, 2016. The rulemaking removed unnecessary restrictions that required infant/child cardiopulmonary resuscitation (CPR) and first aid (FA) training to be "approved by" the American Red Cross (ARC) or the American Heart Association (AHA), rather than "conform with" ARC or the AHA guidelines. This impacted which organizations could provide acceptable training in infant/child CPR and FA to DES-certified childcare providers, making it more difficult for providers to comply with the requirements. The restrictions also limited the number of vendors qualified to deliver CPR/FA training to applicants and DES-certified child care providers. The Department states that the amendments to this rule had a positive economic impact on both DES-certified childcare providers and organizations that deliver a classroom or blended-learning CPR/FA combined course that conforms to the guidelines of the ARC or the AHA. The Department believes that by promoting fair competition among providers of equivalent CPR/FA training, especially in rural areas, the rules resulted in greater flexibility and cost-savings to DES-child care providers without adversely affecting public health and safety.

Stakeholders include the Department; vendors offering CPR/FA training; certified childcare providers and applicants, children under their care, and the children's parents; 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 states that these rules govern the requirements for becoming a DES-Certified Family Child Care Home Provider. The Department indicates that the benefits of the rules 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.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticism of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the following rules are not clear, concise, and understandable:

- **R6-5-5201:**
    - Some terms defined in this rule are outdated or no longer used or do not align with federal or state statutes and regulations.
- **R6-5-5202:**

    - The rule does not include the full set of criminal background checks required under 45 CFR 98 nor all the required immunizations under state law.
- **R6-5-5203:**
    - The health and safety requirements for a provider's home in this rule are not in alignment with 45 CFR 98.
- **R6-5-5204:**
    - This rule does not reflect the shift in statutory and regulatory authority of the required CHILDS central registry background checks to the Department of Child Safety under A.R.S. § 8-451. The central registry background checks are now performed by the Department of Child Safety.
- **R6-5-5207:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to criminal background checks, training, and emergency response planning.
- **R6-5-5208:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to the responsibilities of the provider and the Department for recertification.
- **R6-5-5210:**
    - The rule does not reflect the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451 and it does not align with the health and safety requirements under 45 CFR 98.
- **R6-5-5212:**
    - The rule does not align with positive discipline techniques and expulsion prevention requirements under 45 CFR 98.
- **R6-5-5213:**
    - The rule is not in alignment with the requirement of the provider to use a full-sized baby crib and the dimensions of a full-sized baby crib under 16 CFR 1219 Safety Standards for Full-size Baby Cribs.
- **R6-5-5214:**
    - This rule does not align with the requirements and standards for the prevention of sudden infant death syndrome and safe sleeping practices required under 45 CFR 98.
- **R6-5-5216:**
    - The rule does not align with A.R.S. 28-914 which prohibits the use of a cellular phone while driving.
- **R6-5-5217:**
    - This rule does not align with health and safety requirements related to foods and beverages served by a provider under 45 CFR 98.
- **R6-5-5218:**
    - The rule does not align with health and safety requirements for the disposal of bio-contaminants under 45 CFR 98.
- **R6-5-5219:**
    - The rule does not provide for the record retention of emergency evacuation drills as required under 45 CFR 98.
- **R6-5-5221:**

    - The rule does not address the reporting requirements for incidents related to a child in care's welfare as required under 45 CFR 98.
- **R6-5-5222:**
    - This rule does not describe the exception to this requirement, such as not requiring a backup provider in rural areas where none are available.
- **R6-5-5224:**
    - The rule does not align with program integrity and enforcement requirements under 45 CFR 98.
- **R6-5-5226:**
    - The rule does not recognize the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the following rules are not consistent with other rules and statutes:

- **R6-5-5201:**
    - Some terms defined in this rule are outdated or no longer used or do not align with federal or state statutes and regulations.
- **R6-5-5202:**
    - The rule does not include the full set of criminal background checks required under 45 CFR 98 nor all the required immunizations under state law.
- **R6-5-5203:**
    - The health and safety requirements for a provider's home in this rule are not in alignment with 45 CFR 98.
- **R6-5-5204:**
    - This rule does not reflect the shift in statutory and regulatory authority of the required CHILDS central registry background checks to the Department of Child Safety under A.R.S. § 8-451. The central registry background checks are now performed by the Department of Child Safety.
- **R6-5-5207:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to criminal background checks, training, and emergency response planning.
- **R6-5-5208:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to the responsibilities of the provider and the Department for recertification.
- **R6-5-5210:**
    - The rule does not reflect the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451 and it does not align with the health and safety requirements under 45 CFR 98.
- **R6-5-5212:**
    - The rule does not align with positive discipline techniques and expulsion prevention requirements under 45 CFR 98.
- **R6-5-5213:**

    - The rule is not in alignment with the requirement of the provider to use a full-sized baby crib and the dimensions of a full-sized baby crib under 16 CFR 1219 Safety Standards for Full-size Baby Cribs.
- **R6-5-5214:**
    - This rule does not align with the requirements and standards for the prevention of sudden infant death syndrome and safe sleeping practices required under 45 CFR 98.
- **R6-5-5216:**
    - The rule does not align with A.R.S. 28-914 which prohibits the use of a cellular phone while driving.
- **R6-5-5217:**
    - This rule does not align with health and safety requirements related to foods and beverages served by a provider under 45 CFR 98.
- **R6-5-5218:**
    - The rule does not align with health and safety requirements for the disposal of bio-contaminants under 45 CFR 98.
- **R6-5-5219:**
    - The rule does not provide for the record retention of emergency evacuation drills as required under 45 CFR 98.
- **R6-5-5221:**
    - The rule does not address the reporting requirements for incidents related to a child in care's welfare as required under 45 CFR 98.
- **R6-5-5224:**
    - The rule does not align with program integrity and enforcement requirements under 45 CFR 98.
- **R6-5-5226:**
    - The rule does not recognize the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the following rules are not effective in achieving their objectives:

- **R6-5-5201:**
    - Some terms defined in this rule are outdated or no longer used or do not align with federal or state statutes and regulations.
- **R6-5-5202:**
    - The rule does not include the full set of criminal background checks required under 45 CFR 98 nor all the required immunizations under state law.
- **R6-5-5203:**
    - The health and safety requirements for a provider's home in this rule are not in alignment with 45 CFR 98.
- **R6-5-5204:**

    - This rule does not reflect the shift in statutory and regulatory authority of the required CHILDS central registry background checks to the Department of Child Safety under A.R.S. § 8-451. The central registry background checks are now performed by the Department of Child Safety.
- **R6-5-5207:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to criminal background checks, training, and emergency response planning.
- **R6-5-5208:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to the responsibilities of the provider and the Department for recertification.
- **R6-5-5210:**
    - The rule does not reflect the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451 and it does not align with the health and safety requirements under 45 CFR 98.
- **R6-5-5212:**
    - The rule does not align with positive discipline techniques and expulsion prevention requirements under 45 CFR 98.
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- **R6-5-5221:**
    - The rule does not address the reporting requirements for incidents related to a child in care's welfare as required under 45 CFR 98.
- **R6-5-5222:**
    - This rule does not describe the exception to this requirement, such as not requiring a backup provider in rural areas where none are available.
- **R6-5-5224:**

    - The rule does not align with program integrity and enforcement requirements under 45 CFR 98.
- **R6-5-5226:**
    - The rule does not recognize the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the following rules are not enforced as written:

- **R6-5-5201:**
    - Some terms defined in this rule are outdated or no longer used or do not align with federal or state statutes and regulations.
- **R6-5-5202:**
    - The rule does not include the full set of criminal background checks required under 45 CFR 98 nor all the required immunizations under state law.
- **R6-5-5203:**
    - The health and safety requirements for a provider's home in this rule are not in alignment with 45 CFR 98.
- **R6-5-5204:**
    - This rule does not reflect the shift in statutory and regulatory authority of the required CHILDS central registry background checks to the Department of Child Safety under A.R.S. § 8-451. The central registry background checks are now performed by the Department of Child Safety.
- **R6-5-5207:**
    - The rule is not in alignment with the requirements of 45 CFR 98 related to criminal background checks, training, and emergency response planning.
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- **R6-5-5212:**
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- **R6-5-5214:**
    - This rule does not align with the requirements and standards for the prevention of sudden infant death syndrome and safe sleeping practices required under 45 CFR 98.

- **R6-5-5216:**
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    - The rule does not align with program integrity and enforcement requirements under 45 CFR 98.
- **R6-5-5226:**
    - The rule does not recognize the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451.

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 corresponding federal law, which includes the Child Care and Development Block Grant (CCDBG) of 2014 and Child Care and Development Funds (CCDF) regulations at 45 CFR 98 and 99

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, as defined at A.R.S. § 41-1001(12), a certification of DES-child care providers meets the criteria of a general permit and meets the requirements of A.R.S. § 41-1037. 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 twenty-eight (28) rules in Title 6, Chapter 5, Article 52 regarding the Certification and Supervision of Family Child Care Home Providers. The Department indicates these rules are not clear, concise, understandable, consistent, effective, or enforced as written. The Department proposes to update the rules in Title 6, Chapter 5, Article 52 to bring the Department in compliance with the Child Care and Development Block Grant Act of 2014 and corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing a Notice of Final Rulemaking with the Council by June 2025.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Angie Rodgers
Director

October 24, 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 5, Social Services, Article 52.

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 Administrator, Governance and Innovation Administration, at (480) 487-7694.

Sincerely,

Nicole Davis

Nicole Davis
Office of General Counsel

Attachment

Department of Economic Security
Title 6, Chapter 5, Article 52
Certification and Supervision of Family Child Care Home Providers
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1003, 41-1954(A)(3), and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 41-1072 through 41-1077, 46-802, 46-807, and 46-809

2. Analysis of rules:

Rule	Analysis	
R6-5-5201	Title:	Definitions
	Objective:	The objective of this rule is to define the terms in this Article and promote a uniform understanding of the terms used by the Department.

- 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: *Some terms defined in this rule are outdated or no longer used or do not align with federal or state statutes and regulations.*

Rule	Analysis	
R6-5-5202	Title:	Initial Application for Certification
	Objective:	The objective of this rule is to explain the application requirements to become a DES-certified child care provider.

- 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 does not include the full set of criminal background checks required under 45 CFR 98 nor all the required immunizations under state law.*

Rule	**Analysis**	
R6-5-5203	Title:	Initial Certification: The Home Facility
	Objective:	The objective of this rule is to explain the health and safety requirements and conditions a DES-certified child care provider's home must comply with during the initial certification process to become a DES-certified child care provider.

- 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 health and safety requirements for a provider's home in this rule are not in alignment with 45 CFR 98.*

Rule	**Analysis**	
R6-5-5204	Title:	Initial Certification: Department Responsibilities
	Objective:	The objective of this rule is to explain the Department's responsibilities and the guidelines the Department follows to determine the suitability of a DES-certified child care provider during the initial certification 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 does not reflect the shift in statutory and regulatory authority of the required CHILDS central registry background checks to the Department of Child Safety under A.R.S. § 8-451. The central registry background checks are now performed by the Department of Child Safety.*

Rule **Analysis**

R6-5-5205 Title: Certification Time-frames

Objective: The objectives of this rule are to provide the public with the time frames involved in the application process prescribed by A.R.S. § 41-1073 and includes separate time frames for determining administrative completeness and completing substantive review of applications.

- 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**

R6-5-5206 Title: Certificates: Issuance; Non-transferability

Objective: The objectives of this rule are to describe the requirements regarding the DES certificates issued to certify Child Care Providers. This includes the valid time period of the DES certificate, the non-transferability of a DES certificate, the location in which a DES certificate should be posted in a home facility, the time frame to surrender a DES certificate upon revocation or voluntary closure to

the Department, and that the DES certificate shall designate the number of children allowed in child care at any one time.

- 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**

R6-5-5207 Title: Maintenance of Certification: General Requirements; Training

Objective: The objectives of this rule are to establish general requirements for a DES-certified child care provider to maintain a DES certificate, including ongoing training in child care related topics, pediatric cardiopulmonary resuscitation, and first aid. This rule also describes the requirement to maintain a valid fingerprint clearance card for child care personnel, as well as the Department's requirement to conduct announced and unannounced onsite monitoring visits to a DES-certified child care provider.

- 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 in alignment with the requirements of 45 CFR 98 related to criminal background checks, training, and emergency response planning.*

Rule **Analysis**

R6-5-5208 Title: Recertification Requirements

Objective: The objective of this rule is to establish the conditions under which the Department may renew a DES certificate issued to a DES-certified child care provider every three years.

- 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 in alignment with the requirements of 45 CFR 98 related to the responsibilities of the provider and the Department for recertification.*

Rule **Analysis**

R6-5-5209 Title: Program and Equipment

Objective: The objectives of this rule are to establish a DES-certified child care provider's responsibility to offer a developmentally appropriate program that meets the needs of each child in care and identifies different activities and equipment that can be used in the provider's 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**

R6-5-5210 Title: Safety; Supervision

Objective: The objectives of this rule are to explain the general safety and supervisory requirements for a DES-certified child care provider, the circumstances under which a DES-certified child care provider may use a backup provider, the requirements for notifying the parents and guardians when a backup provider is used, the supervision requirements of children in care, and the mandatory reporting requirements for suspected child abuse and neglect. The rule also

explains the individuals who are authorized to pick up children from a provider's home.

- 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 does not reflect the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451 and it does not align with the health and safety requirements under 45 CFR 98.*

Rule **Analysis**

R6-5-5211 Title: Sanitation

Objective: The objectives of this rule are to establish adequate sanitation requirements that a DES-certified child care provider shall meet to ensure the health and safety of children in care and to prevent the spread of communicable disease in a DES-certified home.

- 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**

R6-5-5212 Title: Discipline

Objective: The objectives of this rule are to describe guidelines and limitations regarding the methods a DES-certified child care provider may use when providing guidance or discipline to children in care, including the requirement to set clear time limits and providing positive guidance, redirection, and time-out.

- 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 does not align with positive discipline techniques and expulsion prevention requirements under 45 CFR 98.*

Rule	**Analysis**	
R6-5-5213	Title:	Evening and Nighttime Care
	Objective:	The objectives of this rule are to explain the DES-certified child care provider's responsibilities when providing nighttime care and the safe sleep requirements for the children under care.

- 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 in alignment with the requirement of the provider to use a full-sized baby crib and the dimensions of a full-sized baby crib under 16 CFR 1219 Safety Standards for Full-size Baby Cribs.*

Rule	**Analysis**	
R6-5-5214	Title:	Children Younger than Age 2
	Objective:	The objective of this rule is to explain the requirements a DES-certified child care provider shall follow when caring for a child younger than two years old, including requirements for feeding, safe sleep, physical contact, and prevention of abusive head trauma.

- 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 does not align with the requirements and standards for the prevention of sudden infant death syndrome and safe sleeping practices required under 45 CFR 98.*

Rule **Analysis**

R6-5-5215 Title: Children with Special Needs

Objective: The objectives of this rule are to explain the responsibilities of a DES-certified child care provider who cares for children with special needs, including the responsibility to consult with parents to establish a mutually agreed upon care plan; ensure reasonable accommodations and inclusion practice; and provide accommodations for private diaper changing area for children older than three years of age.

- 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**

R6-5-5216 Title: Transportation

Objective: The objective of this rule is to establish safety guidelines and requirements for a DES-certified child care provider who uses a motorized vehicle to transport a child in care.

- 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 does not align with A.R.S. 28-914 which prohibits the use of a cellular phone while driving.*

Rule **Analysis**

R6-5-5217 Title: Meals and Nutrition

Objective: The objective of this rule is to explain the DES-certified child care provider's responsibility to supply healthy meals and snacks for children in care and the responsibility to meet special dietary needs for children in care.

- 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 does not align with health and safety requirements related to foods and beverages served by a provider under 45 CFR 98.*

Rule **Analysis**

R6-5-5218 Title: Health Care; Medications

Objective: The objectives of this rule are to establish guidelines for a DES-certified child care provider to control infectious disease, store and administer medications, and keep a written log of medication administered to children in care. This rule also provides procedures to take when a child becomes ill and describes the DES-certified child care provider's responsibility to obtain only emergency medical treatment for a child in care, when needed.

- 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 does not align with health and safety requirements for the disposal of bio-contaminants under 45 CFR 98.*

Rule **Analysis**

R6-5-5219 Title: Recordkeeping; Unusual Incidents; Immunizations

Objective: The objectives of this rule are to establish the system a DES-certified child care provider shall use to maintain and retain a child's medical records to ensure compliance with the immunization requirements set by the Department of Health Services, including immunization records and exemption affidavits. This system would also include unusual incidents. This rule also requires a DES-certified child care provider to collect and keep certain documents according to the requirements of this Article and the child care registration agreement.

- 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 does not provide for the record retention of emergency evacuation drills as required under 45 CFR 98.*

Rule **Analysis**

R6-5-5220 Title: Provider/Child Ratios

Objective: The objective of this rule is to establish the ratio of adults to children allowed for DES-certified child care providers and how the

Department may limit the ratio under certain circumstances.

- 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**

R6-5-5221 Title: Change Reporting Requirements

Objective: The objective of this rule is to describe a DES-certified child care provider's responsibility to notify the Department of significant changes that may affect the safety and stability of child care services and the timeframe in which changes shall be 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**

Explanation: *The rule does not address the reporting requirements for incidents related to a child in care's welfare as required under 45 CFR 98.*

Rule **Analysis**

R6-5-5222 Title: Use of a Backup Provider

Objective: The objectives of this rule are to explain the DES-certified child care provider's responsibility to maintain a DES-approved backup provider to ensure care is provided even when the DES-certified child care provider is unable to care for the children. This rule also addresses the proper use of the DES-approved backup provider and clarifies the procedures for mandatory reporting to the Department and to the parents when backup care is used.

- 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 does not describe the exception to this requirement, such as not requiring a backup provider in rural areas where none are available.*

Rule **Analysis**

R6-5-5223 Title: Claims For Payment

Objective: The objective of this rule is to describe the basis for payment to a DES-certified child care provider for the provision of child care, as well as the responsibility of a DES-certified child care provider to make financial arrangements with a DES-approved backup provider when a backup provider is used to provide child care.

- 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**

R6-5-5224 Title: Complaints; Investigations

Objective: The objective of this rule is to describe the procedures the Department uses to document and investigate a complaint received against a DES-certified child care provider.

- 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 does not align with program integrity and enforcement requirements under 45 CFR 98.*

Rule	**Analysis**	
R6-5-5225	Title:	Probation
	Objective:	The objective of this rule is to describe the procedures the Department uses when placing a DES-certified child care provider on probation, including timeframes and progressive adverse action that may result from continued noncompliance.

- 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**	
R6-5-5226	Title:	Certification, Denial, Suspension, and Revocation
	Objective:	The objective of this rule is to establish the criteria the Department uses to deny, suspend, revoke, or refuse to renew a child care certification.

- 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 does not recognize the shift in statutory and regulatory authority of Child Protective Services to the Department of Child Safety under A.R.S. § 8-451.*

Rule	**Analysis**	
R6-5-5227	Title:	Adverse Action; Notice Effective Date
	Objective:	The objective of this rule is to describe the actions the Department takes to notify a DES-certified child care provider when an adverse action is taken against the DES-certified child care provider.

- 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**	
R6-5-5228	Title:	Appeals
	Objective:	The objectives of this rule are to establish a DES-certified provider's right to appeal an adverse action taken by the Department; clarify appealable and non-appealable actions; and explain 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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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:

The Department previously completed an Economic, Small Business, and Consumer Impact Statement on these rules during a final rulemaking approved by GRRC on October 4, 2016. This rulemaking removed unnecessary restrictions that required infant/child cardiopulmonary resuscitation (CPR) and first aid (FA) training to be "approved by" the American Red Cross (ARC) or the American Heart Association (AHA), rather than “conform with” ARC or the AHA guidelines. This impacted which organizations could provide acceptable training in infant/child CPR and FA to DES-certified child care providers, making it more difficult for providers to comply with the requirement. The restrictions also limited the number of vendors qualified to deliver CPR/FA training to applicants and DES-certified child care providers. In 2016, the cost of a CPR/FA/Automated External Defibrillator(AED) course provided by the ARC was $140.00 per person. The cost of the same course from AHA was $40.00 to $65.00 per person, depending on the trainer. Currently, the cost of a CPR/FA combined training through the ARC ranges from $80.00 - $95.00 per person and equivalent training through the AHA ranges from $80.00 - $100.00 per person, depending on the trainer or location of training. The amendments to this rule had a positive economic impact on both DES-certified child care providers and organizations that deliver a classroom or blended-learning CPR/FA combined course that conforms to the guidelines of the ARC or the AHA. The American Safety and Health Institute and MEDIC First Aid Training Centers in Arizona offer a CPR/FA combined course that is currently $75.00 per person. By promoting fair competition among providers of equivalent CPR/FA training, especially in rural areas, the rules resulted in greater flexibility and cost-savings to DES-child care providers without adversely affecting public health and safety.

The current rules under Article 52 provide the least burdensome economic impact to small businesses and members of the public.

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 ☐ N/A ☑

In the previous Five-Year Review Report approved by the Council on August 6, 2019, the Department did not propose to make any amendments to these rules.

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:**

These rules govern the requirements for becoming a DES-Certified Family Child Care Home Provider. 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?**

☐ Yes ☑ No

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:**

An analysis of the definition for a general permit, as defined at A.R.S. § 41-1001(12), indicates that a certification of DES-child care providers meets the criteria of a general permit and meets the requirements of A.R.S. § 41-1037.

10. **Proposed course of action:**

The Department proposes to update the rules in 6 A.A.C. 5 Article 52 to address the issues identified in section 2 of this report. These amendments will bring the Department in compliance with the Child Care and Development Block Grant Act of 2014 and corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing a Notice of Final Rulemaking with the Council by June 2025.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

R6-5-5107. Expired

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective September 30, 1977 (Supp. 77-5). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS

R6-5-5201. Definitions
The following definitions apply in this Article:

1. "Abandonment" has the meaning ascribed to "abandoned" in A.R.S. § 8-201 (1).
2. "Abuse" has the meaning ascribed in A.R.S. § 8-201 (2).
3. "Age" means years of a person's lifetime when used in reference to a number, unless the term "months" is used.
4. "Adult" means a person age 18 or older.
5. "Applicant" means a person who submits a written application to the Department to become certified as a child care provider.
6. "Backup provider" means an adult who, or an entity that, provides child care when a provider is not available.
7. "CACFP" means the Child and Adult Care Food Program.
8. "Certificate" means a document the Department issues to a provider as evidence that the provider has met the child care standards of this Article.
9. "Child" means a person younger than age 18.
10. "Child care" means the compensated care, supervision, recreation, socialization, guidance, and protection of a child who is unaccompanied by a parent.
11. "Child care personnel" means all adults residing in a home facility, an in-home provider, and any backup provider.
12. "Child care registration agreement" means a written contract between a provider and the Department; that establishes the rights and duties of the provider and the Department for provision of child care.
13. "Child care specialist" means a Department child care eligibility and/or certification staff person.
14. "CHILDS" means the Children's Information Library and Data Source, which is a comprehensive, automated system to support child welfare policies and procedures, and includes information on investigations, ongoing case management, and payments.
15. "CHILDS Central Registry" means the Child Protective Services Central Registry, a confidential, computerized database within CHILDS, which the Department maintains according to A.R.S. § 8-804.
16. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child who has a physical or mental impairment that substantially limits one or more major life activities; has a record of having a physical or mental impairment that substantially limits one or more of the child's major life activities; or who is regarded as having an impairment, regardless of whether the child has the impairment.
17. "Client" means a person who applies for and meets the eligibility criteria for a child care service program administered by the Department.
18. "Compensation" means something given or received, such as money, goods, or services, as payment for child care services.
19. "Corporal punishment" means any act that is administered as a form of discipline and that either is intended to cause bodily pain, or may result in physical damage or injury.
20. "CPS" means Child Protective Services, a Department administration that operates a program to investigate allegations of child maltreatment and provide protective services.
21. "Department" means the Arizona Department of Economic Security.
22. "Developmentally appropriate" means an action that takes into account:
    a. A child's age and family background;
    b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
    c. The individual child's pattern and timing of growth, personality, and learning style.
23. "DHS" means the Arizona Department of Health Services.
24. "Direct supervision" means within sight and sound.
25. "Exploitation" means an act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
26. "Evening care" means child care provided at any time between 6:30 p.m. and midnight.
27. "Heating device" means an instrument designed to produce heat for a room or inside area and includes a nonelectric stove, fireplace, freestanding stove, or space heater.
28. "Home facility" means a provider's residence that the Department has certified as a location where child care services may be provided.
29. "Household member" means a person who does not provide child care services and who resides in the home facility of a provider for 21 consecutive days or longer or who resides periodically throughout the year for a total of at least 21 days.
30. "Infant" means:
    a. A child who is younger than 12 months old; and
    b. A child who is younger than 18 months old and not walking.
31. "In-home provider" means a provider who cares for a child in the child's home.
32. "Maltreatment" means abuse, neglect, exploitation, or abandonment of a child.
33. "Medication" means any prescribed or over-the-counter drug or medicine.
34. "Mechanical restraint" means a device to restrict a child's movement.

35. "Neglect" has the same meaning ascribed in A.R.S. § 8-201.
36. "Night-time care" means child care provided at any time between midnight and 6:00 a.m.
37. "Non-parent relative" means a caretaker relative who exercises responsibility for the day-to day physical care, guidance, and support of a child who physically resides with the relative and who is by affinity, consanguinity, or court decree, a grandparent, great grandparent, sibling of the whole or half-blood, stepbrother, stepsister, aunt, uncle, great aunt, great uncle, or first cousin of the child.
38. "Parent" means the biological or adoptive parent of a child, a court-appointed guardian, or a non-parent relative.
39. "Provider" means an adult who is not the parent or guardian of a child needing care, and to whom the Department has issued a certificate, and includes a backup provider who performs the provider's duties when the provider is unavailable.
40. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement.
41. "Safeguard" means to use reasonable efforts and developmentally appropriate measures to eliminate the risk of harm to a child in care and ensure that a child in care will not be harmed by a particular object, substance, or activity. Safeguarding may include:
    a. Locking up a particular substance or item;
    b. Putting a substance or item beyond the reach of a child who is not mobile;
    c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
    d. Mandating the use of a protective safety device; or
    e. Providing direct supervision.
42. "Sanitize" means treatment by a heating or chemical process that reduces the bacterial count, including pathogens, to a safe level.
43. "Time out" means removing a child from a situation by directing the child to remain in a specific chair or place identified as the time out place, for no more than one minute for each year of a child's age, but no more than 10 minutes.
44. "Undue hardship" means significant difficulty or substantial expense concerning the operation of a provider's program. In this subsection, "significant" and "substantial" are measured relative to the level of net income the provider earns from child care services.
45. "Unusual incident" means any accident, injury, behavior problem, or other extraordinary situation involving a provider or a child in care, including suspected child maltreatment.

Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5202. Initial Application for Certification

A. To become a certified child care provider, an applicant shall comply with all requirements of this Article and other applicable requirements of federal, state, or local law.

B. An applicant shall be at least age 18.

C. An applicant shall submit a complete, signed application form to the Department.

D. An applicant shall designate one or more backup providers from the following list:
1. An individual who is age 18 or older and who satisfies the requirements for backup providers outlined in this Article;
2. A DHS-licensed child care center;
3. A DHS-certified child care group home; or
4. A DES-certified family child care home.

E. An applicant shall participate in any orientation and training and shall cooperate in conducting any pre-certification interviews and inspections the Department may require.

F. An applicant shall give the Department the names of three references who:
1. Have known the applicant at least one year,
2. Are unrelated by blood or marriage to the applicant, and
3. Can furnish information regarding the applicant's character and ability to care for a child.

G. An applicant and any designated individual backup provider shall furnish a self-statement of physical and mental health on a form provided by the Department.

H. An applicant and each designated individual backup provider shall have the physical, mental, and emotional health necessary to perform the duties and meet the responsibilities established by this Article. If the Department has questions about the applicant's health that the applicant cannot satisfactorily answer or explain, the applicant, upon request by the Department, shall submit to a physical or psychological examination by a licensed physician, psychologist, or psychiatrist, and shall provide the Department with a professional opinion addressing the Department's questions. The applicant shall bear the cost of any professional examinations that the Department needs to determine whether the individual is qualified.

I. The Department may require an applicant to furnish at least the following information about the applicant, the applicant's spouse, members of the applicant's household, children residing outside of the applicant's home, and the individual backup provider:
1. Name;
2. Current address;
3. Telephone number;
4. Date of birth;
5. Social security number;
6. Maiden name, aliases, and nicknames;
7. Relationship to the applicant or backup provider;
8. Marital status and marital history;
9. Educational background;
10. Ethnicity;
11. Gender;
12. Birthplace;
13. Physical characteristics; and
14. Citizenship status.

J. Child care personnel shall submit the notarized criminal history certification form required by A.R.S. § 41-1964, and disclose whether they have committed any acts of child maltreatment or have been the subject of a Child Protective Service investigation.

K. On a Department form, an applicant, all adult household members, and all individual backup providers shall provide employment histories for the five-year period immediately preceding the application date, beginning with the individual's present or most recent job.

L. An applicant shall furnish proof that the applicant, the individual backup provider, and members of the applicant's household who are age 13 or younger are immune from measles, rubella, diphtheria, tetanus, pertussis, polio, and any other dis-

eases for which routine immunizations are readily and safely available.

1. The Department may waive the requirements of this subsection for a household member if the applicant will be certified as an in-home provider only and submits an affidavit attesting that household members will not be present when child care services are provided.
2. The Department shall waive the requirements of this subsection if the applicant:
   a. Submits an affidavit stating that household members are being raised in a religion whose teachings oppose immunization; and
   b. Affirms, in writing, that families will be notified of the religious exemption before child care services are provided.

M. An applicant shall submit evidence of current freedom from pulmonary tuberculosis for the applicant, all household members, and all individual backup providers. If the application is approved, this evidence shall be submitted each succeeding calendar year.

1. Evidence required under this subsection is limited to:
   a. A report of a negative Mantoux skin test performed within three months of the date or anniversary date of initial certification.
   b. A physician's written statement based on an examination performed within three months of the date or anniversary date of initial certification.
2. The Department shall waive the requirements of this subsection for household members if the applicant will be certified as an in-home provider only and submits an affidavit that household members will not be present when child care services are provided.

N. An applicant shall provide a statement of services on a Department form. The statement shall describe:

1. The home at which services will be provided, location, and hours of operation;
2. The applicant's daily rates and fees;
3. The ages of children the applicant will accept;
4. The equipment, materials, daily activities, and play areas available to children in care;
5. Any special child care skills, knowledge, or training the applicant has; and
6. The behavior, guidance, and discipline methods the applicant uses.

O. During an interview with the child care specialist, an applicant shall complete a Department questionnaire describing:

1. The applicant's child rearing philosophy;
2. The home environment, including intra-family relationships and attitudes toward child care;
3. The parenting and discipline methods employed by the applicant and the applicant's parents; and
4. The applicant's child care training and experience.

P. Upon Department request, an applicant, all members of the applicant's household, and all individual backup providers shall comply with any additional requirements and requests for interviews, inspections, or information necessary to determine the applicant's fitness to serve as a certified child care provider.

Q. A complete application package consists of an applicant's completed application form and evidence that the applicant, all members of the applicant's household, and all individual backup providers have met all requirements and submitted all information and documentation listed in this Section.

R. The Department shall send an applicant a notice of administrative completeness or deficiency, as described in A.R.S. § 41-1074, indicating the additional information, if any, that the applicant must provide for a complete application package. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time-frame described in R6-5-5205. If the applicant does not supply the missing information listed in the notice, the Department may close the file.

S. An applicant whose file is closed may reapply for certification.

T. After an applicant submits a complete application for initial certification, the Department shall inspect the applicant's home to determine whether the home meets the regulations of this Article.

Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5203. Initial Certification: The Home Facility

A provider's home facility shall meet the requirements of this Section.

1. A provider shall maintain the indoor and outdoor premises of the home facility in a safe and sanitary condition, free from hazards and vermin, and in good repair. A mobile home shall have skirting to ensure that a child in care cannot go beneath the mobile home.
2. Any area to be occupied by a child in care shall have heat, light, ventilation, and screening. The provider shall maintain the home facility between 68° and 85° F.
3. A provider shall vent and safeguard all heating devices to protect each child from burns and harmful fumes.
4. A provider shall safeguard all potentially dangerous objects from children, including:
   a. Household and automotive tools;
   b. Sharp objects, such as knives, glass objects, and pieces of metal;
   c. Fireplace tools, butane lighters and igniters, and matches;
   d. Machinery;
   e. Electrical boxes;
   f. Electrical outlets;
   g. Electrical wires; and
   h. Chemicals, cleaners, and toxic substances.
5. A provider shall store firearms and ammunition separately from one another, under lock and key or combination lock.
6. A home facility shall have adequate space and equipment to accommodate each child in care, and other household members who are in the home facility at the same time as children in care. In this subsection, "adequate" means sufficient space and equipment to:
   a. Permit all persons in the dwelling to have safe freedom of movement;
   b. Permit children in care to be seated together for meals and snacks; and
   c. Permit all children in care to be engaged in developmentally appropriate activities at the same time and in a room where the provider can keep all children within sight.
7. A provider shall keep outside play areas clean and safe and shall fence the play area if there are conditions that may pose a danger to any child playing outside. The fence shall be at least 4 feet high and free of hazards, including splinters and protruding nails or wires. The

fence shall have only self-closing, self-latching, lockable gates.

8. A home facility shall have the following equipment:
   a. A charged, readily accessible, operable, multi-purpose (ABC class) fire extinguisher that the applicant knows how to operate;
   b. At least one UL-approved, working smoke detector, properly mounted on each level of the dwelling;
   c. At least two usable outdoor exits;
   d. A posted written plan or diagram for emergency evacuation;
   e. A working telephone or other two-way communication device acceptable to the Department; and
   f. An easily accessible life-saving device if the home facility has a pool or other body of water more than 12 inches deep. A "life-saving device" means a ring buoy with at least 25 feet of 1/2-inch rope attached or a shepherd's crook.
9. If a home facility has a swimming pool or other body of water more than 12 inches deep, the pool or body of water shall be enclosed by a permanent fence that separates it from all other outdoor areas and from doors and windows into the home facility. The fence shall be at least 5 feet high and shall have only self-closing, self-latching, lockable gates. Open spaces between upright or parallel posts and poles on fences and gates shall be no more than 4 inches apart. When the pool or body of water is not in use, the provider shall lock the gates.
10. A provider shall enclose spas and hot tubs with fencing as described in subsection (9), or with a hard, locked cover that prevents access and can support at least 100 pounds.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5204. Initial Certification: Department Responsibilities

A. Before issuing a certificate, the Department shall:
1. Conduct at least one face-to-face interview with an applicant;
2. Contact any other person necessary to determine an applicant's fitness to be a certified provider;
3. Ensure that an applicant and all individual backup providers have complied with and satisfy the requirements of R6-5-5202;
4. Inspect the home where an applicant will provide child care, unless it is the child's own home, and ensure that it meets the requirements of R6-5-5203;
5. Conduct a CHILDS Central Registry check for:
   a. An applicant;
   b. The applicant's household members;
   c. The applicant's emancipated children who live outside the applicant's home, if any; and
   d. Any individual backup provider.
6. Find that an applicant has the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.

B. The Department shall objectively determine whether to certify an applicant based on the applicant's entire application package, and the information the Department has acquired during the course of the application process.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5205. Certification Time-frames

For the purpose of A.R.S. § 41-1073, the Department established the following certification time-frames:
1. Administrative completeness review time-frame: 60 days,
2. Substantive review time-frame: 30 days, and
3. Overall time-frame: 90 days.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5205 renumbered to R6-5-5206 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5206. Certificates: Issuance; Non-transferability

A. A certificate is valid for three years from the date of issuance. The Department may revoke a certificate before expiration as provided in this Article and by law.

B. A certificate is not transferable and is valid only for the provider and location identified on the certificate.

C. A provider shall post the certificate in a conspicuous location in the home facility.

D. A certificate is the property of the state of Arizona. Upon revocation or voluntary closure, a provider shall surrender the certificate issued to the provider to the Department within seven days.

E. The Department shall designate on the certificate issued to the provider the total number of children to be allowed in child care at any one time. The total shall not exceed the limits set in R6-5-5220.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Amended effective February 24, 1977 (Supp. 77-1). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5206 renumbered to R6-5-5207; new Section R6-5-5206 renumbered from R6-5-5205 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5207. Maintenance of Certification: General Requirements; Training

A. Child care personnel and all individual backup providers shall be fingerprinted and pay all required fingerprint fees within the time prescribed in A.R.S. § 41-1964.

B. A provider and all individual backup providers shall maintain the physical, mental, and emotional health necessary to fulfill all legal requirements for child care providers.

C. No later than 60 days after the date of provider certification, a provider and individual backup providers shall furnish the Department with proof of acceptable first aid training and certification in infant/child cardiopulmonary resuscitation ("CPR"). As used in this Section, "acceptable training" means a classroom or blended-learning course that conforms to the current guidelines of the American Red Cross or the American Heart Association, as confirmed in writing by the training provider. The Department may extend the time for completing this requirement and children may remain in care during an extension, if:
1. The class was not available within the 60-day time period; or
2. The provider, individual backup provider, or a dependent was ill, and the provider or backup provider was unable to attend a scheduled class due to the illness.

D. A provider and individual backup providers shall maintain current training and certification in first aid and infant/child CPR through acceptable training courses.

E. A certified provider shall attend at least six hours of training each calendar year in any of the following subjects:
1. The Department's child care program, policies, and procedures;
2. Child health and safety, including recognition, control, and prevention of illness and disease;
3. Child growth and development;
4. Child abuse prevention, detection, and reporting;
5. Positive guidance and discipline;
6. Child nutrition;
7. Communication with families; family involvement;
8. Developmentally appropriate practices; and
9. Other similar subjects designed to improve the provider's ability to provide child care.

F. A provider shall maintain a record of all training, and annually furnish the Department with proof of attendance.

G. A provider shall maintain a safe and clean home facility, including furnishings, equipment, supplies, materials, utensils, toys, and grounds, that meets the standards in this Article.

H. At all times, a provider shall allow the Department access to all parts of the home facility. The Department shall make at least two onsite visits each year to each home facility and in-home provider. At least one visit shall be unannounced.

I. A provider shall allow a parent or a designated representative access to the home facility at all times when the parent's child is present, and shall give parents and designated representatives written notice explaining this right.

J. A provider shall directly supervise a visitor to the home facility while the visitor is in an area with a child in care.

K. A provider shall not expose a child in care to tobacco products or smoke.

L. A provider shall not care for a child while under the influence of alcoholic beverages, medication, or any other substance, that may or does impair the provider's ability to care for a child.

M. A provider shall not consume alcoholic beverages while caring for a child.

N. A provider shall not refuse to provide care to any child on the basis of color, sex, religion, disability, or national origin.

O. If a provider is notified that a child or household member has a communicable disease, the provider shall ensure that a child who lacks written evidence of immunity to the communicable disease is not permitted to be present in the home facility until:
1. A parent provides written evidence of the child's immunity to the disease; or
2. A local health department notifies the provider that the child may return to the home facility

Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5207 renumbered to R6-5-5208; new Section R6-5-5207 renumbered from R6-5-5206 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5208. Recertification Requirements

A. Before recertifying a provider, the Department shall interview the provider at the location where child care will be provided. The Department Representative may interview an in-home provider at the in-home provider's residence. The interview shall include a discussion and review of the provider's experiences in the provision of child care services during the current certification period.

B. A provider shall demonstrate the continued physical, mental, and emotional health necessary to perform the duties and fulfill the responsibilities in this Article.

C. Before recertification, a provider and designated individual backup provider shall furnish a self statement of physical and mental health and freedom from communicable diseases on a form furnished by the Department.

D. The Department shall renew a certificate only after a provider demonstrates the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.

E. Unless the Department, in its sole discretion,. accepts a provider's written assurance of future compliance with the requirements of this subsection, the Department shall deny recertification or take other enforcement action when the provider does not accept Department-referred children on three separate occasions unless the refusal is for:
1. Illness, accident, or incapacity of the provider;
2. Illness, accident, or incapacity of any household member, if the existing condition will pose a risk to children in care, or limit the provider's ability to provide child care in accordance with the law;
3. The provider is not equipped or trained to provide care to the referred child, and the provider cannot acquire the equipment or training without undue hardship;
4. The provider has no available slots;
5. The situations listed in R6-5-5222 and a backup provider is unavailable;
6. A child has not been immunized, and the parent or guardian is unwilling to obtain appropriate immunization, in accordance with R6-5-5219(F); or
7. The home facility is in temporary disrepair or under construction.

F. The Department may obtain any supplemental information needed to determine continuing fitness to serve as a certified child care provider.

G. A provider, all household members, and an individual backup provider shall cooperate with the Department in providing all information required for recertification.

H. The Department shall determine whether to recertify a provider based on the provider's original application package, all previous monitoring reports, and all additional information the Department receives during the recertification process.

Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5208 renumbered to R6-5-5209; new Section R6-5-5208 renumbered from R6-5-5207 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5209. Program and Equipment

A. A provider shall offer a program that is developmentally appropriate for, and meets the needs of each child in care. The daily program and activity schedule shall include a balance of the following:
1. Indoor and outdoor activities;
2. Activities that encourage movement and quiet time;
3. Activities that encourage a child's creativity;
4. Individual and group activities;
5. Small and large muscle development activities; and
6. Activities that include social interaction, problem solving, and negotiating skills.

B. A provider shall incorporate into the program each child's daily routine activities, such as diapering, toileting, eating, dressing, resting, and sleeping, in accordance with the developmental needs of each child.

C. A provider shall develop a flexible, developmentally appropriate program that the provider can adjust to accommodate unanticipated events such as the illness of a child or changes in the weather.

D. A provider shall have play equipment and materials sufficient to meet the program requirements described in subsections (A) through (C), and to ensure that all children in care can be occupied in developmentally appropriate play at the same time.

E. A provider who cares for a child who is younger than age 2 shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
1. Touch boards;
2. Soft puppets;
3. Soft or plastic blocks;
4. Simple musical instruments;
5. Push-pull toys for beginning walkers;
6. Picture and texture books;
7. Developmentally appropriate art materials, including crayons, paints, finger paints, watercolors, and paper;
8. Simple, 2-3 piece puzzles and peg boards; and
9. Large beads to string or snap.

F. A provider who cares for a child age 2 or older shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
1. Art supplies;
2. Blocks and block accessories;
3. Books and posters;
4. Dramatic play areas with toys and dress-up clothes;
5. Large muscle equipment;
6. Manipulative toys;
7. Science materials; and
8. Musical instruments.

G. A provider shall have a bed, cot, mat, crib, or playpen for each child in care who requires a daily nap or rest period. Each infant in care shall have a safe crib, port-a crib, bassinet, or playpen.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5209 renumbered to R6-5-5210; new Section R6-5-5209 renumbered from R6-5-5208 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5210. Safety; Supervision

A. When a provider is unavailable to care for a child for a reason described in R6-5-5222(B), the provider may use only the backup provider designated under R6-5-5202 or R6-5-5222(E).

B. A provider shall give parents and guardians written notice of the provider's backup care plan.

C. A provider shall not engage in activities that interfere with the ability to supervise and care for children, including other employment, and volunteer or recreational activities. An in-home provider shall not perform housekeeping duties unrelated to the care of the child.

D. A provider shall directly supervise each child who is awake.

E. A provider shall have unobstructed access to and shall be able to hear each child who is sleeping.

F. A provider shall not permit a child in care to use a spa or hot tub.

G. A provider shall have written permission from a parent or guardian before allowing a child to engage in water play. In this subsection, "water play" means any activity in which water is likely to get into a child's ears.

H. A provider shall directly supervise any child who is in a pool area.

I. A provider shall accompany a child who is using a public or semi-public swimming place.

J. A provider shall have written permission from a child's parent or designated representative to bathe or shower the child, or to allow the child to bathe or shower independently.

K. A provider shall not permit a child younger than age 6 to bathe or shower unsupervised.

L. A provider shall report suspected child abuse or neglect to CPS or the local law enforcement department as required by A.R.S. § 13-3620.

M. A provider shall use developmentally appropriate precautions to separate a child in care from hazardous areas, including locked doors and safe portable folding gates.

N. A provider shall release a child only to the child's parent or to an adult who has been designated in writing by the parent.

O. A provider shall not allow a person addicted to or under the influence of illegal drugs or alcohol in the home facility while children in care are present.

P. A provider shall not permit a person who is abusive to children, or who uses unacceptable disciplinary methods as described in R6-5-5212, into the home facility when children in care are present.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5210 renumbered to R6-5-5211; new Section R6-5-5210 renumbered from R6-5-5209 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5211. Sanitation

A. A provider and each child in care shall wash their hands with soap and running water after playing with animals or using the toilet, and before and after handling, serving, or eating food. If a child cannot reach a sink with running water, due to the child's age or some limiting condition, the provider shall clean that child's hands with an individual, clean, washcloth.

B. A provider shall wash, in hot soapy water, and sanitize, all utensils used for eating, drinking, and food preparation.

C. A provider shall have a garbage can with a close-fitting lid.

D. A provider shall dispose of garbage in the home facility at least once a day.

E. A provider shall empty and sanitize wading pools measuring 12 inches deep or less, after each use.

F. A provider shall maintain, in a sanitary condition, a swimming pool or other area or container, which is more than 12 inches deep and used for water play.

G. A provider shall frequently check the diaper of each child in care and shall immediately change a soiled diaper.

H. A provider shall have sanitary arrangements for diaper changing and disposal of soiled diapers, including the following:
1. The diaper changing area shall not be in an area where food is prepared or consumed;
2. The diapering surface shall be cleaned, sanitized, and dried after each diaper change;
3. Following bulk stool disposal into a toilet, soiled cloth diapers shall not be rinsed, but shall be bagged in plastic, individually labeled with child's name, stored in a cov-

ered container out of reach of children, and returned to the child's parent each day; and

4. Soiled disposable diapers shall be discarded in a tightly covered, lined container out of reach of children.

I. Before and after each diaper change, a provider shall wash hands with soap and running water in a sink not used for food preparation.

J. A provider shall sanitize a bathtub before bathing each child in care.

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5211 renumbered to R6-5-5212; new Section R6-5-5211 renumbered from R6-5-5210 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5212. Discipline

A. A certified provider and all individual backup providers shall sign a written agreement to abide by the Department's policy on developmentally appropriate discipline.

B. Only a provider may discipline a child in care;

C. A provider may physically restrain a child whose behavior is uncontrolled, only when the physical restraint:

1. Is necessary to prevent harm to the child or others;
2. Occurs simultaneously with the uncontrolled behavior;
3. Does not impair the child's breathing; and
4. Cannot harm the child.

A provider shall use the minimum amount of restraint necessary to bring the child's behavior under control.

D. A provider shall not use the following disciplinary measures:

1. Corporal punishment, including shaking, biting, hitting, or putting anything in a child's mouth;
2. Placing a child in isolation or in a closet, laundry room, garage, shed, basement, or attic;
3. Locking a child out of the home facility;
4. Placing a child in any area where the provider cannot directly supervise the child;
5. Methods detrimental to the health or emotional needs of a child;
6. Administering medications;
7. Mechanical restraints of any kind;
8. Techniques intended to humiliate or frighten a child;
9. Discipline associated with eating, sleeping, or toileting; or
10. Abusive or profane language.

E. As a disciplinary measure, a provider may place a child in time out. During the time out period, the provider shall keep the child in full view. Time out shall not be used for children less than age 3.

F. A provider shall maintain consistent, reasonable rules that define acceptable behavior for a child in care.

G. A provider shall use discipline only to teach acceptable behavior and to promote self-discipline, not for punishment or retribution.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5212 renumbered to R6-5-5213; new Section R6-5-5212 renumbered from R6-5-5211 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5213. Evening And Nighttime Care

A. A provider who offers evening or nighttime care shall remain awake until each child in care is asleep.

B. A provider who offers nighttime care shall have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress for each child. Crib bars or slats shall be no more than 2 3/8 inches apart, and the crib mattress shall fit snugly into the crib frame so that no space remains between the mattress and frame.

C. A provider may allow siblings to share a bed only if the provider has received written parental permission.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5213 renumbered to R6-5-5214; new Section R6-5-5213 renumbered from R6-5-5212 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5214. Children Younger than Age 2

A provider who cares for a child younger than age 2 shall comply with the following requirements:

1. A provider shall frequently hold a child and give each infant and toddler physical contact and attention throughout the day.
2. A provider shall respond promptly to a child's distress signals and need for comfort.
3. A provider shall get written permission from a parent or guardian to give a child a bedtime or nap-time bottle. If the provider receives permission, the provider shall use only water in the bottles, unless otherwise directed by the child's physician.
4. A provider shall not confine a child in a crib, high chair, swing, or playpen, for more than one consecutive waking hour.
5. A provider shall not feed cereal by bottle, except with the written instruction of a physician.
6. A provider shall hold an infant younger than age 1 for any bottle feeding, and shall not prop bottles with a child in care.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5214 renumbered to R6-5-5215; new Section R6-5-5214 renumbered from R6-5-5213 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5215. Children with Special Needs

A. When enrolling a child with special needs, a provider shall comply with the requirements of this Section:

1. A provider shall consult with parents to establish a mutually agreed upon plan regarding services for a child with special needs;
2. A provider shall have the physical ability and appropriate training to provide the care required by a child with special needs;
3. A provider shall use best efforts to integrate a child with special needs into the daily activities of the home facility in a manner that is the least restrictive, and that meets the child's individual needs;
4. If a provider regularly cares for a child with special needs older than age 3 who requires diapering, the home facility shall have a diaper changing area that permits the child to have privacy. Proper sanitation shall be maintained as described in R6-5-5211.

B. A provider shall make reasonable accommodations in the home facility, equipment, and materials for a child with special needs.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Former

Section R6-5-5215 renumbered to R6-5-5216; new Section R6-5-5215 renumbered from R6-5-5214 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5216. Transportation

A. A provider shall obtain prior written permission from a child's parent before transporting a child in a privately owned vehicle or on public transportation.

B. A provider shall ensure that a child in care is transported in a private vehicle by a person who has:
1. A valid Arizona driver's license;
2. Automobile insurance that meets the financial responsibility requirement of Arizona law; and
3. No convictions for driving while intoxicated within three years before the date of transportation.

C. A provider shall transport a child only in a mechanically safe vehicle. "Mechanically safe" means a vehicle with:
1. Functioning brakes, signal lights, and headlights;
2. Tires with tread; and
3. Structural integrity.

D. A provider shall not transport a child on a motorcycle or in a vehicle that is not constructed for the purpose of transporting people, such as a truck bed, camper, or any trailered attachment to a motor vehicle.

E. A provider shall transport a child in a separate car seat, seat belt, or child-restraint device in compliance with A.R.S. § 28-907.

F. A provider shall never leave a child unattended in a vehicle.

G. A provider shall maintain first-aid supplies in a privately owned vehicle used to transport children in care.

H. A provider shall carry a child's emergency-information card when transporting a child in care.

I. A provider shall sign a form that states that the provider will abide by R6-5-5216.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5216 renumbered to R6-5-5217; new Section R6-5-5216 renumbered from R6-5-5215 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5217. Meals and Nutrition

A. A provider shall serve a child in care wholesome and nutritious foods and beverages. In this Section, "wholesome and nutritious" means foods and beverages consistent with the requirements of 7 CFR 226.20 (January 1, 1998), which is incorporated by reference and available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona 85007 and in the office of the Secretary of State at 1700 West Washington, Phoenix, Arizona. The incorporated material contains no later amendments or editions.

B. A provider shall supplement meals and snacks supplied by a parent when the supplied food does not provide a child with a wholesome and nutritious diet.

C. A provider shall make available to a child in care meals and snacks that satisfy the child's appetite and dietary needs.

D. A provider shall consult with a parent to identify, in writing, any special dietary needs or instructions for a child in care.

E. A provider shall give a child any necessary assistance in feeding and shall teach self-feeding skills, but shall not force a child to eat.

F. A provider shall monitor all perishable foods, including infant formulas and sack lunches. The provider shall ensure that food is individually labeled with a child's name, dated, covered, and properly stored to prevent spoilage at temperatures of 45ºF or less.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5217 renumbered to R6-5-5218; new Section R6-5-5217 renumbered from R6-5-5216 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5218. Health Care; Medications

A. When a provider enrolls a child for care, the provider shall make written arrangements with the child's parent for emergency medical care of the child.

B. If a child becomes ill while in care, a provider shall:
1. Make the child comfortable and keep the child in full view; and
2. Notify the parent or other designated person that the child is ill and must be immediately removed from care.

C. A provider shall notify the parent of other children in care when a child in care contracts an infectious illness.

D. A provider shall not provide care while knowingly infected with or presenting symptoms of an infectious disease.

E. If a child exhibits symptoms of an infectious disease, the child may return to care when fever free and symptom free, or with written permission from the child's medical practitioner that returning will not endanger the health of the child or other children in care.

F. A provider shall not admit a child in need of professional medical attention to the home facility and shall direct the parent to obtain medical attention for the child.

G. Only a provider shall administer medication with signed written instructions for administering the medication from the child's parent.

H. A provider shall not administer:
1. Medication that is date expired or in something other than its original container; or
2. Prescription medication that does not bear the date of issue, the child's name, the amount and frequency of dosage, and the doctor's name.

I. A provider shall maintain a written log of all medications administered. The log shall include:
1. The name of the child receiving the medication;
2. The name of the medication;
3. The date and time of administration; and
4. The dosage administered.

J. A provider shall use a sanitary medication measure for accurate dosage.

K. A provider shall keep all medication in a locked storage container, and refrigerate if necessary.

L. A provider shall have first-aid supplies available at the home facility, which shall be administered only by the provider.

M. A provider is responsible for obtaining only emergency medical treatment for a child in care.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5218 renumbered to R6-5-5219; new Section R6-5-5218 renumbered from R6-5-5217 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5219. Recordkeeping; Unusual Incidents; Immunizations

A. A provider shall maintain a daily attendance log on a Department-approved form and shall require that each child be

signed in and out on the log by the parent or other individual designated in writing by the parent.

B. On a form approved by the Department, a provider shall promptly log all accidents, injuries, behavior problems, or other unusual incidents at the home facility, including any suspected child abuse or neglect.

C. A provider shall immediately report all unusual incidents to a parent or guardian of the child involved and shall report the incidents to the Department within 24 hours of the time of occurrence.

D. A provider shall maintain records in accordance with the requirements of the provider's child care registration agreement. The provider shall make the following records readily available for inspection by the Department and shall keep them separate from household and other personal records:
1. Information listed in subsection (E);
2. Immunization records identified in subsection (F) and R6-5-5202 (L);
3. Documentary evidence of freedom from communicable tuberculosis as required by R6-5-5202 (M);
4. The provider's certification, re-certification, and monitoring records;
5. Health records of child care personnel;
6. The provider's training records;
7. Unusual incident reports; and
8. Daily logs of attendance, accidents, injuries, medications administered, behavior problems, or other unusual incidents.

E. A provider shall maintain at least the following information for each child in care:
1. The child's name, home address, telephone number, gender, and date of birth;
2. The name, home and business addresses, and telephone numbers of the child's parent;
3. The name, address and telephone number of the child's physician or health care provider and hospital;
4. Authorization and instructions for emergency medical care when the parent cannot be located; and
5. Written authorization to release a child to any individual other than the parent and the name, home and work addresses, and telephone numbers of that individual.

F. A provider shall maintain an immunization record or exemption affidavit for each child in care.
1. Documentation required under this subsection is limited to:
   a. An immunization record prepared by the child's health care provider stating that child has received current, age-appropriate immunizations specified in R9-6-702, including immunizations for Diphtheria, Haemophilus influenzae type b, Hepatitis B, Measles, Mumps, Pertussis, Poliomyelitis, Rubella, and Tetanus;
   b. An affidavit signed by the child's health care provider stating that the child has a medical condition that causes the required immunizations to endanger the child's health; or
   c. An affidavit signed by the child's parent stating that the child is being raised in a religion whose teachings oppose immunization.
2. If a child has received all current immunizations but requires further inoculations to be fully immunized, the provider shall require the parent to verify that the parent will have the child complete all immunizations in accordance with the DHS recommended schedule identified in R9-6-702. The provider shall:
   a. Require the parent to produce documented records from the child's health care provider of the immunizations as they are completed; and
   b. Maintain the records as required by subsection (F)(1).
3. The provider shall not permit a child in care to remain enrolled for more than 15 days if the parent does not provide proof of current, age-appropriate immunizations, a statement of timely completion of further inoculations, or exemption from immunization.

G. Children exempted from immunizations for religious or medical reasons shall be excluded from the home facility if there is an outbreak of an immunizable disease at the home facility.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5219 renumbered to R6-5-52020; new Section R6-5-5219 renumbered from R6-5-5218 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

R6-5-5220. Provider/Child Ratios

A. The Department may certify a provider in a home facility to care for a maximum of four children at a time, from birth through age 12, for compensation. A provider in a home facility may care for a maximum of six children at a time, from birth through age 12, or a child age 13 or older who is a child with special needs, when all of the following conditions are met:
1. No more than four children in care are for compensation; and
2. No more than two of the children in care are younger than age 1, unless a sibling group.

B. The Department may certify an in-home provider to provide the following care:
1. An in-home provider may care for a sibling group of no more than six children.
2. An in-home provider shall care only for the children who live in that home.
3. An in-home provider may bring the in-home provider's own children to the in-home location with the written permission of the client, and so long as the total number of children at the in-home location does not exceed six children.

C. The Department may further limit the ratios allowed in subsections (A) and (B) to protect the well-being of children in care. The Department may impose additional restrictions when:
1. There are more than two children residing in the home facility who are counted in the ratio;
2. The Department determines that the home facility and the furnishings are inadequate to accommodate four children at a time for compensation, as provided in Section R6-5-5203(6);
3. The Department has determined that a provider is physically unable to care for four children at a time; for compensation or
4. A provider requests certification for fewer than four children at a time for compensation.

D. For the sole purpose of establishing and monitoring ratios, the Department shall not count any child who is age 13 or older, except as provided in subsection (A) for a child with special needs.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5220 renumbered to R6-5-5221; new Sec-

tion R6-5-5220 renumbered from R6-5-5219 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5221. Change Reporting Requirements

At least 15 days before the effective date of any scheduled change, or within 24 hours after an unscheduled change, which significantly affects the provision of child care services, a provider shall furnish the Department with written notice of the change. Significant changes include, but are not limited to:

1. Home remodeling;
2. Home repair;
3. Pool installation;
4. Relocating to a new residence;
5. Change in household composition;
6. Telephone number change;
7. Change of backup provider;
8. Voluntarily relinquishing the certificate; and
9. Any other change in the home facility or the provider's personal circumstances that affect the provider's ability to provide stable child care services.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5221 renumbered to R6-5-5222; new Section R6-5-5221 renumbered from R6-5-5220 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5222. Use of A Backup Provider

A. A provider shall maintain a backup provider, and shall keep clients and the Department apprised of the backup provider's identity and location.

B. A provider may use a backup provider only in the following circumstances:

1. When the provider is ill;
2. When the provider is attending to an emergency related to the provision of child care;
3. When the provider has an emergency involving the provider or the provider's dependent family members;
4. When the provider needs to attend a non-emergency appointment for the provider or the provider's dependent family members, and the provider cannot schedule the appointment outside of normal child care hours;
5. When the provider is attending classes to meet training requirements listed in this Article; or
6. When the provider is taking a vacation.

C. At the time of enrollment of a child in care, a provider shall advise the parent of the possible use of a backup provider.

D. A provider shall notify the Department within 24 hours of the onset of the use of a backup provider.

E. When a provider designates a new backup provider, the provider shall ensure that the backup provider meets the requirements for backup providers in R6-5-5202.

F. A provider shall execute a backup provider agreement form furnished by the Department, which identifies the backup provider and contains assurances that the backup provider will be used in accordance with the requirement of this Section.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5222 renumbered to R6-5-5223; new Section R6-5-5222 renumbered from R6-5-5221 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5223. Claims For Payment

A. A provider shall submit claims for payment in the manner prescribed in the child care registration agreement with the Department.

B. A provider shall make all financial arrangements with a backup provider. The Department shall not make direct payments to the backup provider.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5223 renumbered to R6-5-5224; new Section R6-5-5223 renumbered from R6-5-5222 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5224. Complaints; Investigations

A. Any person may register, with the Department, a written or verbal complaint about a provider or the operation of a home facility. Upon receipt of a complaint, or in response to the observations of Department staff, the Department shall investigate the allegations made and any matters related to certification and compliance with the child care registration agreement.

B. A provider who is the subject of a complaint shall cooperate with the Department in conducting an investigation. The provider shall allow a Department representative to inspect the home facility and all records, and to interview any child care personnel, or household member.

C. The Department shall maintain a file on all complaints against a provider and shall make information on valid complaints available to parents and to the general public upon request and as permitted by law.

D. Following an investigation, the Department shall take appropriate administrative action as described in this Article.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5224 renumbered to R6-5-5225; new Section R6-5-5224 renumbered from R6-5-5223 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5225. Probation

A. The Department may place a provider on probation when a Department representative observes a problem or the Department receives and validates a complaint in an area of noncompliance that does not endanger a child in care.

B. The Department shall set a term of probation that does not exceed 30 days.

C. The Department may suspend a provider's child care certificate if the same infraction that resulted in probation is repeated during a provider's current certification period and the Department determines that the provider has not demonstrated either the intent or ability to comply with the requirements of this Article.

D. The Department shall not authorize any new child for payment to a provider who is on probation. Children already in that provider's care may remain authorized.

E. Probationary status is not appealable.

Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5225 renumbered to R6-5-5226; new Section R6-5-5225 renumbered from R6-5-5224 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5226. Certification, Denial, Suspension, and Revocation

A. The Department may deny, suspend, or revoke certification when:
1. An applicant or provider violates or fails to comply with any statute or rule applicable to the provision of Child Care Services.
2. An applicant or provider has a certificate or license to operate a child care home or facility denied, revoked, or suspended in any state or jurisdiction.
3. An applicant or provider fails to disclose requested information or provides false or misleading information to the Department.
4. A provider's contract with the Department to furnish child care services expires or is terminated.
5. Child care personnel fail or refuse to comply with or meet the requirements of A.R.S. § 41-1964.
6. A provider fails or refuses to correct or repeats a violation that resulted in probation or suspension.
7. The Department, through its CPS hotline, receives a report of alleged child maltreatment by an applicant, provider, or household member who is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative hearing.
8. An applicant or provider fails or refuses to cooperate with the Department in providing information required by these rules or any information necessary to determine compliance with these rules.
9. An applicant, provider, or household member engages in any activity or circumstance that may threaten or adversely affect the health, safety, or welfare of children, including inadequate supervision or failure to protect from actual or potential harm.
10. An applicant or provider is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.
11. The Department, through its CPS hotline, receives a report of alleged child maltreatment in a home facility that is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative proceeding.
12. An applicant, provider, or household member is the subject of a substantiated or undetermined report of child maltreatment in any state or jurisdiction. Substantiated child maltreatment includes, but is not limited to, a probable cause finding by CPS or a law enforcement agency.
13. CPS or a law enforcement agency substantiates a report of child maltreatment in a home facility.

B. In determining whether to take disciplinary action against a provider, or to grant or renew a certificate, the Department may evaluate the provider's history from other certification periods, both in Arizona and in other jurisdictions, and shall consider multiple violations of statutes or rules applicable to the provision of child care services as evidence that the applicant or provider is unable or unwilling to meet the needs of children.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5226 repealed; new Section renumbered from R6-5-5225 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5227. Adverse Action; Notice Effective Date

A. When the Department denies, suspends, or revokes certification, it shall mail a written, dated notice of the adverse action to the applicant or the provider at the applicant's or provider's last known address.

B. A notice of adverse action shall specify:
1. The adverse action taken and date the action will be effective;
2. The reasons supporting the adverse action; and
3. The procedures by which the applicant or provider may contest the action taken and the time period in which to do so.

C. Except as provided in subsection (D), a revocation, suspension, or denial of recertification is effective 20 calendar days from the date on the notice or letter advising the provider of the adverse action.

D. A suspension, revocation, or denial of recertification is effective on the date of the notice or letter advising the person of the adverse action if:
1. The adverse action is based on the failure of child care personnel to comply with or meet the requirements of A.R.S. § 41-1964; or
2. The Department bases the adverse action on a determination that the health, safety, or welfare of a child in care is in jeopardy.

E. The Department shall stop payment authorization for all subsidized children in care on the effective date of a suspension, revocation, or denial of recertification.

F. The Department shall not authorize the referral of additional children to a provider after mailing a notice of adverse action to the provider's last known address.

Historical Note
Adopted effective May 11, 1994 (Supp. 94-2). Amended effective June 4, 1998 (Supp. 98-2). Former Section R6-5-5227 renumbered to R6-5-5228 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

R6-5-5228. Appeals

A. An applicant or provider may appeal the following Department decisions:
1. Denial of certification or re-certification;
2. Suspension of a certificate; and
3. Revocation of a certificate.

B. A person who wishes to appeal an adverse action shall file a written request for a hearing with the Department within 15 calendar days of the date on the notice or letter advising the provider of the adverse action.

C. The Department shall conduct a hearing as prescribed in 6 A.A.C. 5, Article 75. Decisions based on failure to clear a fingerprint check or criminal history check are not appealable under this Article.

D. Matters relating to contractual agreements with the Department, including payment rates and amounts, are not appealable under this Article.

E. When an adverse action based on R6-5-5226(A)(7) is appealed under this Article, allegations of child maltreatment are not at issue and shall not be adjudicated in an administrative proceeding conducted under subsection (C).

Historical Note
New Section R6-5-5228 renumbered from R6-5-5227 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

ARTICLE 53. REPEALED

Former Article 53 consisting of Sections R6-5-5301 through R6-5-5305 repealed effective April 9, 1981.

ARTICLE 54. REPEALED

Former Article 54 consisting of Sections R6-5-5401 through R6-5-5411 repealed effective November 8, 1982.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1954. 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.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.

D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.

2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

46-802. Child care services

The department shall establish and administer child care services. Child care services include:

1. Child care assistance to eligible families.

2. Certification of child care home and in-home providers who are not required to be licensed pursuant to title 36, chapter 7.1 for the purposes of caring for children eligible for child care assistance.

3. Establishment of rights and duties of providers and the department for the provision of child care assistance and services.

4. Consumer education to families and the public, including activities that help families make informed decisions about child care options.

5. Activities that improve the quality and availability of child care.

6. Consultation, technical assistance, training and resources to improve the provision and expand the access to child care services.

46-807. Certification of family child care home and in-home providers; hearing

A. The department shall establish health, safety and training standards for the certification of child care home providers and in-home providers.

B. All child care personnel shall be fingerprinted according to section 41-1964.

C. The department may deny the application or suspend or revoke the certification of a child care home or in-home provider for violation of any provisions of law or failure to maintain the standards of care. Written notice of the grounds of suspension or the proposed denial or revocation shall be given to the applicant or provider. The applicant or provider has a right to request a hearing on the suspension, denial or revocation of a certification, and a hearing shall be held pursuant to title 41, chapter 14, article 3 and according to rules of the department.

46-809. Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.

2. Criteria for certifying child care home and in-home providers.

3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

E-5.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 17

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 10, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 17

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to twenty-eight (28) rules in Title 9, Chapter 7, Article 17 regarding Radiation Control, specifically, Wireline Service Operations and Subsurface Tracer Studies.

In the prior 5YRR for these rules, which was approved by the Council in January 2020, the Department stated that it planned to review the rules in the entire Chapter after completing the 5YRRs on all Articles in the Chapter, the last of which was due to the Council in December 2021 and was approved in March 2022. During this review, the Department indicates it determined that extensive changes were required throughout the entire Chapter and planned a rulemaking to be completed in stages. The Council approved a plan for the rulemaking of the Chapter, with a Notice of Final Rulemaking to be submitted to the Council no earlier than December 2025. Pursuant to A.R.S. § 41-1039(A), the Department indicates it was granted approval to conduct rulemaking in the Chapter in May 2023, and is, thus, complying with the rulemaking plan approved by the Council in March 2022.

Proposed Action

In the current report, the Department indicates some rules are not clear, concise, and understandable as outlined in more detail below. The Department states it is planning to comply with the rulemaking plan for the Chapter that was approved by the Council in March 2022. This plan stated that the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 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 indicates the anticipated economic impacts of the rules at the time of their adoption appear to have aligned closely with the actual economic impacts observed over time. In most cases, the Department expected minimal to no economic burden on stakeholders, especially as many rule changes were clarifications, updates to align with federal requirements, or codifications of existing licensing conditions. The predicted economic benefits, such as improved clarity and regulatory compliance, were realized as expected.

Stakeholders include the Department, entities licensed by the Department, the U.S. Nuclear Regulatory Commission, workers handling radioactive materials, and the general public.

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

The Department believes that the probable benefits of the rules, in protecting employees, the public, and the environment, outweigh the probable costs of the rules. The Department also believes that the substantive content of the rules are the minimum necessary to meet requirements of the Agreement and protect health and safety. Other issues identified in this report may impose a minor regulatory burden, but they are minor in comparison to the costs of having the NRC assume responsibility for compliance with federal requirements.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticism of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the following rules are not clear, concise, and understandable:

- **Multiple:**

    - The rules would be clearer if minor grammatical or formatting changes were made. However, Arizona is required by the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967 to be consistent with requirements of the NRC. To comply with the Agreement some requirements in this Article must be identical to federal requirements, regardless of whether the language is clear or not.
- **R9-7-1701:**
    - The rule would be clearer if the term "tritium neutron generator tube" were defined or described.
- **R9-7-1702:**
    - The rule would be clearer if the exception in subsection (D) were included as a lead-in in subsection (A). Subsection (A)(4) would be clearer if it cited to R9-7-1724. Subsection (A)(5) would be more understandable if it cited to A.A.C. R12-7-126 and R12-7-127, referenced a description of how the Department classifies a source as irretrievable, and specified the event initiating the "within 30 days." Subsection (A)(5)(c)(ii) would be clearer and more concise if this exception for the radiation symbol, in addition to sources of radiation subjected to high-temperature, were included in R9-7-428(B), and if the rule were cited to in the subsection. Subsection (A)(5)(d) would be clearer if it cited the applicable requirements in A.A.C. Title 12, Chapter 7, Article 1 and Title 12, Chapter 15, Article 8. Subsection (B) would be clearer if it contained the cross-reference to subsection (A). Subsection (C) would be clear if it specified how a licensee may apply for approval of an alternate manner to abandon an irretrievable well logging source.
- **R9-7-1703, R9-7-1712, and R9-7-1713:**
    - The rules would be improved if the titles of R9-7-1703 and R9-7-1712 or their content were revised to address an apparent inconsistency. Transport and storage requirements in the three rules might also be better grouped together. However, R9-7-1703 is compatibility category B, meaning it must be word-for-word with federal requirements.
- **R9-7-1716:**
    - The rule would be clearer if the content of the inventory record were in a list, rather than included in a long sentence.
- **R9-7-1718:**
    - The rule would be improved if subsection (A) were changed to clarify that the elements of subsection (A)(1) through (3) are requirements for any sealed source used for well logging applications. The rule would also be improved if the requirements in subsections (C) and (D) were combined. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
- **R9-7-1719:**
    - Subsection (B) would be clearer if it cited to requirements in R9-7-428(A).
- **R9-7-1720:**

    - The rule would be clearer if subsections (A) and (B) were reformatted so they were not as long with multiple sentences. The rule may also be improved if requirements in subsections (C) and (E) were combined.
- **R9-7-1721:**
    - The rule would be clearer if subsections (A)(4) and (B)(3) specified what is "successful" completion of a written/oral test and if the person giving the written test were specified. Subsection (B)(4) could also be improved if it required a logging assistant to demonstrate competence as well as receive instruction. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
- **R9-7-1722:**
    - Subsection (5) could be improved if it cited to R9-7-1723. Subsection (9) would be improved if uranium sinker bars were listed in the rule, consistent with R9-7-1720(B). The rule would also be improved if it contained a requirement for the operating and emergency procedures to be maintained for at least three years past termination, as in other Sections of the Chapter.
- **R9-7-1722, R9-7-1726, R9-7-1727, R9-7-1728, and R9-7-1734:**
    - The rule would be clearer if the term "surface casing" were defined.
- **R9-7-1723:**
    - Subsection (A) would be clearer if it stated "unless that individual wears ..." rather than "unless that person wears ...". Subsection (B) would be improved if it were clearer whether the requirement is for the licensee to ensure that each individual wears the assigned equipment or whether it is a requirement on the individual to wear the assigned equipment. The rule would also be improved by citing limits of exposure.
- **R9-7-1726:**
    - Subsection (C) could be improved if it required all "applicable" requirements to be followed.
- **R9-7-1727:**
    - Subsection (C) could be improved if it required all "applicable" requirements to be followed.
- **R9-7-1728 and R9-7-1734:**
    - The rule would be improved if requirements in R9-7-1728 and R9-7-1734 were combined in one Section.
- **R9-7-1733:**
    - Subsection (A) would be improved by removing passive language and specifying who must take precautions.
- **R9-7-1734:**
    - Subsection (A) would be improved if the "correct procedure" were clarified. The requirements for particle accelerators, specified in subsection (C), should it be in its own Section.
- **R9-7-1741:**
    - Subsection (A) would be improved if the rule specified that a radiation survey should be performed where radioactive material is used, as well as where it is stored, and that the instruments used must meet the requirements in R9-7-1714.

Subsection (B) would be improved if the term "occupied positions" were described. Subsection (E) would be clearer if the content of the record of survey were in a list, rather than included in a long sentence.

- **R9-7-1742:**
  - The rule would be improved if the agreement required in R9-7-1702 were included in the list.
- **R9-7-1743:**
  - Subsection (4) would be clearer if it included a citation to applicable documentation requirements for shipping radioactive materials.
- **R9-7-1751:**
  - The rule would be improved if it did not imply that only the licensee is making the effort to recover the sealed source or implementing abandonment procedures, since, according to the agreement required according to R9-7-1702, the well owner may be the responsible party. Subsection (A)(2) would be clearer if it stated "under R9-7-1702(A) or (C)" since R9-7-1702(C) refers to an abandonment procedure not authorized in R9-7-1702(A)(5), so the two would be mutually exclusive. Subsection (A)(3) would be clearer if the time-frame for making the request were specified. Subsection (C) would be clearer if the three situations requiring notification were listed, with the appropriate cross-reference. Subsection (D) would be clearer if reformatted to better delineate the content and persons receiving the report in the same sentence.

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 that federal regulation 10 CFR 39 is applicable to these rules. The Department states that these 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 Department indicates these rules provide standards and limits for wireline service operations and subsurface tracer studies but do not include the issuance of a license or permit.

11. Conclusion

This 5YRR from the Department relates to twenty-eight (28) rules in Title 9, Chapter 7, Article 17 regarding Radiation Control, specifically, Wireline Service Operations and Subsurface Tracer Studies. The Department indicates the rules are consistent with other rules and statutes, effective, and enforced as written. However, the Department indicates the rules could be more clear, concise, and understandable. The Department states it is planning to comply with the rulemaking plan for the Chapter that was approved by the Council in March 2022. This plan stated that the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

Council staff recommends approval of this report.

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. 7, Article 17, 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. 7, Article 17, 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 Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 17. Wireline Service Operations and Subsurface Tracer Studies

October 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-672, and 30-673

2. **The objective of each rule:**

Rule	Objective
R9-7-1701	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-1702	To specify the requirements for identifying the party responsible for recovery, monitoring, decontamination, and abandonment procedures related to lost or disconnected well logging sources of radioactivity.
R9-7-1703	To establish the transport, use, and storage requirements of source material in well logging.
R9-7-1712	To specify the requirements for storing or transporting a source of radiation used in well logging.
R9-7-1713	To require that transport containers are physically secured in a transporting vehicle.
R9-7-1714	To require the presence of calibrated and operable radiation survey instruments at every field station and temporary job site, including the sensitivity and calibration parameters.
R9-7-1715	To establish requirements for performing leak testing on sealed sources used by a licensee, including the method and frequency of testing, the removal of leaking sources from services, and the maintenance of records. To specify what sealed sources are exempt from testing requirements.
R9-7-1716	To specify requirements for conducting a physical inventory of all licensed material, including the frequency of inventory, content of records, and maintenance of records.
R9-7-1717	To specify requirements for records of use, including the content of the records and length of retention.
R9-7-1718	To specify the design and performance criteria for a sealed source used in well logging operations.
R9-7-1719	To specify labeling requirements for sources, source holders, logging tools, and transport containers to indicate the presence or possible presence of radioactivity.
R9-7-1720	To establish requirements for inspection of equipment used for well logging before use and according to a program for semiannual inspection and routing maintenance.

	To require that equipment found to have a defect is removed from service until repaired and that a record is made and maintained. To specify restrictions on opening, repair, modification, or tampering with a sealed source.
R9-7-1721	To establish the qualifications and training requirements of a logging supervisor and logging assistant to ensure safe well logging operations. To require annual safety training reviews and maintenance of training records.
R9-7-1722	To require the development of operating and emergency procedures and specify the subject matter to be covered to protect health and safety.
R9-7-1723	To establish requirements for the monitoring of radiation exposure by personnel and for related actions to protect health and safety.
R9-7-1724	To specify requirements for radioactive contamination control to protect health and safety.
R9-7-1725	To establish requirements for use of a uranium sinker bar in well logging to ensure health and safety.
R9-7-1726	To establish requirements for use of an energy compensation source in well logging to ensure health and safety.
R9-7-1727	To establish requirements for use of a neutron generator source in well logging to ensure health and safety.
R9-7-1728	To establish requirements for use of a sealed source in a well without surface casing to ensure health and safety.
R9-7-1731	To specify requirements to ensure the security of areas in which licensed material is being used to protect health and safety.
R9-7-1732	To describe requirements for the use of tools for remote handling of sealed sources.
R9-7-1733	To establish requirements for subsurface tracer studies to ensure health and safety.
R9-7-1734	To establish requirements for use of a sealed source in a well without surface casing to protect a freshwater aquifer to ensure health and safety. To establish requirements for use of a particle accelerator to ensure health and safety.
R9-7-1741	To establish requirements for performing radiation surveys, including the method of testing and the content and maintenance of records.
R9-7-1742	To specify the document required to be maintained at a field station.
R9-7-1743	To specify the document required to be maintained at a temporary job site.
R9-7-1751	To specify the notification requirements for incidents, lost sources, or abandoned sources.

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.

Rule	Explanation

4. **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.

Rule	Explanation

5. **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.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** **Yes ___ No _X_**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. However, Arizona is required by the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967 to be consistent with requirements of the NRC. To comply with the Agreement some requirements in this Article must be identical to federal requirements, regardless of whether the language is clear or not.
R9-7-1701	The rule would be clearer if the term "tritium neutron generator tube" were defined or described.
R9-7-1702	The rule would be clearer if the exception in subsection (D) were included as a lead-in in subsection (A). Subsection (A)(4) would be clearer if it cited to R9-7-1724. Subsection (A)(5) would be more understandable if it cited to A.A.C. R12-7-126 and R12-7-127, referenced a description of how the Department classifies a source as irretrievable, and specified the event initiating the "within 30 days." Subsection (A)(5)(c)(ii) would be clearer and more concise if this exception for the radiation symbol, in addition to sources of radiation subjected to high-temperature, were included in R9-7-428(B), and if the rule were cited to in the subsection. Subsection (A)(5)(d) would be clearer if it cited to the applicable requirements in A.A.C. Title 12, Chapter 7, Article 1 and Title 12, Chapter 15, Article 8. Subsection (B) would be clearer if it contained the cross-reference to subsection (A). Subsection (C) would be clear if it specified how a licensee may apply for approval of an alternate manner to abandon an irretrievable well logging source.
R9-7-1703, R9-7-1712, and R9-7-1713	The rules would be improved if the titles of R9-7-1703 and R9-7-1712 or their content were revised to address an apparent inconsistency. Transport and storage requirements in the three rules might also be better grouped together. However, R9-7-1703 is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1716	The rule would be clearer if the content of the inventory record were in a list, rather than included in a long sentence.
R9-7-1718	The rule would be improved if subsection (A) were changed to clarify that the elements of subsection (A)(1) through (3) are requirements for any sealed source used for well logging applications. The rule would also be improved if the requirements in subsections (C) and (D) were combined. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1719	Subsection (B) would be clearer if it cited to requirements in R9-7-428(A).

R9-7-1720	The rule would be clearer if subsections (A) and (B) were reformatted so they were not as long with multiple sentences. The rule may also be improved if requirements in subsections (C) and (E) were combined.
R9-7-1721	The rule would be clearer if subsections (A)(4) and (B)(3) specified what is "successful" completion of a written/oral test and if the person giving the written test were specified. Subsection (B)(4) could also be improved if it required a logging assistant to demonstrate competence as well as receive instruction. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1722	Subsection (5) could be improved if it cited to R9-7-1723. Subsection (9) would be improved if uranium sinker bars were listed in the rule, consistent with R9-7-1720(B). The rule would also be improved if it contained a requirement for the operating and emergency procedures to be maintained for at least three years past termination, as in other Sections of the Chapter.
R9-7-1722, R9-7-1726, R9-7-1727, R9-7-1728, and R9-7-1734	The rule would be clearer if the term "surface casing" were defined.
R9-7-1723	Subsection (A) would be clearer if it stated "unless that individual wears …" rather than "unless that person wears …". Subsection (B) would be improved if it were clearer whether the requirement is for the licensee to ensure that each individual wears the assigned equipment or whether it is a requirement on the individual to wear the assigned equipment. The rule would also be improved by citing to limits of exposure.
R9-7-1726	Subsection (C) could be improved if it required all "applicable" requirements to be followed.
R9-7-1727	Subsection (C) could be improved if it required all "applicable" requirements to be followed.
R9-7-1728 and R9-7-1734	The rule would be improved if requirements in R9-7-1728 and R9-7-1734 were combined in one Section.
R9-7-1733	Subsection (A) would be improved by removing passive language and specifying who must take precautions.
R9-7-1734	Subsection (A) would be improved if the "correct procedure" were clarified. The requirements for particle accelerators, specified in subsection (C), should it be in its own Section.
R9-7-1741	Subsection (A) would be improved if the rule specified that a radiation survey should be performed where radioactive material is used, as well as where it is stored, and that the instruments used must meet the requirements in R9-7-1714. Subsection (B) would be improved if the term "occupied positions" were described. Subsection (E) would be clearer if the content of the record of survey were in a list, rather than included in a long sentence.
R9-7-1742	The rule would be improved if the agreement required in R9-7-1702 were included in the list.
R9-7-1743	Subsection (4) would be clearer if it included a citation to applicable documentation requirements for shipping radioactive materials.
R9-7-1751	The rule would be improved if it did not imply that only the licensee is making the effort to recover the sealed source or implementing abandonment procedures, since, according to the agreement required according to R9-7-1702, the well owner may be the responsible party. Subsection (A)(2) would be clearer if it stated "under R9-7-1702(A) or (C)" since R9-7-1702(C) refers to an abandonment procedure not authorized in R9-7-1702(A)(5), so the two would be mutually exclusive. Subsection (A)(3) would be clearer if the time-frame for making the request were specified. Subsection (C) would be

	clearer if the three situations requiring notification were listed, with the appropriate cross-reference. Subsection (D) would be clearer if reformatted to better delineate the content and persons receiving the report in the same sentence.

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:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona is an Agreement State by the agreement negotiated between the United States Atomic Energy Commission (now U.S. Nuclear Regulatory Commission (NRC)) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656 (Agreement). In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations, as required in A.R.S. § 30-654(B)(6). When the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency in 2018, the rules in Article 17 were recodified from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules.

The rules in Article 17 were first adopted in 1990, with revisions made and Sections added in five other rulemakings over the ensuing years. No economic impact statements (EISs) are available to the Department for the original rulemaking or three of the subsequent rulemakings, so the economic impact of the Sections made/revised in the four rulemakings was assessed from information in the Notice of Final Rulemaking for the rulemaking, including review of the changes made. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

Currently, the Department specifically licenses only four entities that use the rules in Article 17. An additional three to five entities operate according to these rules under reciprocity. These entities provide services to companies in the oil and gas industries, which use wireline logging to obtain a continuous record of the properties of a rock formation.

The one Section that was made in 1990 and has not been revised in a subsequent rulemaking is R9-7-1732. This rule requires tools to be used when handling higher energy radioactive materials. The cost to the regulated community from this rule would be the purchase and maintenance of these tools. This cost was estimated to be less than the economic impact arising from the damage to the health of an individual handling such a sealed source without tools. The Department believes the economic impact is as estimated.

In a rulemaking effective in 2003, R9-7-1703, R9-7-1712, R9-7-1714, R9-7-1717, R9-7-1719, R9-7-1722, R9-7-1731, R9-7-1733, R9-7-1734, and R9-7-1741 were last revised. No EIS is available for this rulemaking. In all but one of these rules, the changes made as part of the rulemaking were identified in a five-year-review report of the rules and clarify and improve the rules. Thus, they were believed to impose no costs and provide a benefit to stakeholders. In R9-7-1734, requirements for use of a sealed source in a well without a surface casing were

included, which had previously been required as conditions of use in a license, so the economic impact of this change was estimated to be minimal. The Department believes the economic impact is as estimated.

In the first of two rulemakings effective in 2004, nine other rules were newly made and one extensively revised to be consistent with federal requirements to comply with the Agreement. These include defining new technologies; adding radioactive contamination safeguards; including requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing; and adding standards for lost and abandoned sources. An EIS is available for this rulemaking. For most of these changes, little, if any, economic impact was predicted. The EIS stated that no licensees in Arizona were performing well logging activities affected by the new requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing. Therefore, the addition of these requirements was thought to have no current economic impact. However, the EIS stated that an economic effect could possibly occur in the future because these requirements, if conditions/procedures changed. In addition, the costs associated with decontamination and clean-up that may result from not complying with the requirements were stated as being much greater than costs of compliance. Since these rules were adopted, there have been no changes in conditions/procedures related to requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing that have an economic effect, so the Department believes the economic impact is as estimated.

The second rulemaking in 2004 included R9-7-1716, R9-7-1720, R9-7-1721, R9-7-1742, and R9-7-1743. No EIS is available for this rulemaking. These rules were revised to include NRC standards required in 10 CFR 39 and were believed to not result in any increased cost to any affected party. The Department believes the economic impact is as estimated.

In a 2009 rulemaking, only one rule in Article 17, R9-7-1713, was revised, and an EIS is available for this rulemaking. This rule was revised to remove passive language without changing the substance of the rule. Therefore, the rulemaking may have had a very minimal benefit from increased clarity, but no other economic impact was identified. The Department believes the economic impact is as estimated.

The last time any of the rules in Article 17 were amended was in 2017, when requirements in R9-7-1723 were changed through expedited rulemaking to conform to revised requirements of the NRC. The rulemaking made changes in R9-7-1723 to clarify requirements and account for dosimeters that did not require "processing." The Department believes the economic impact is as estimated.

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.

In the 2019 five-year-review report, the Department stated that the Department planned to review the rules in the entire Chapter after completing the five-year-review reports on all Articles in the Chapter, the last of which was

due to the Council in December 2021 and was approved in March 2022. During this review, the Department determined that extensive changes were required throughout the entire Chapter and planned a rulemaking to be completed in stages. The Council approved a plan for the rulemaking of the Chapter, with a Notice of Final Rulemaking to be submitted to the Council no earlier than December 2025. Pursuant to A.R.S. § 41-1039(A), the Department was granted approval to conduct rulemaking in the Chapter in May 2023, and is, thus, complying with the rulemaking plan approved by the Council in March 2022.

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 probable benefits of the rule, in protecting employees, the public, and the environment, outweigh the probable costs of the rule. The Department also believes that the substantive content of the rules are the minimum necessary to meet requirements of the Agreement and protect health and safety. Other issues identified in this report may impose a minor regulatory burden, but they are minor in comparison to the costs of having the NRC assume responsibility for compliance with federal requirements.

12. 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)?

10 CFR 39

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules in Article 17 provide standards and limits for wireline service operations and subsurface tracer studies but do not include the issuance of a license or permit.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department is planning to comply with the rulemaking plan for the Chapter that was approved by the Council in March 2022. This plan stated that the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

2003-4
rulemaking effective July 3 2004

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

Arizona Radiation Regulatory Agency

Docket No. RMP-0056

Title 12, Chapter 1

Articles 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, and 17

A. Economic, small business and consumer impact summary:

1. In this package many new rules will be added to Title 12 as part of the Agency's continuing effort to stay abreast of Nuclear Regulatory Commission (NRC) standards according to the Agreement, signed with the federal government in which Arizona agreed to manage users of radioactive material (RAM). In addition, some of the proposed changes in Articles 7, 8, 10, and 13 are offered as a result of a five-year review that was approved by the GRRC on March 5, 2002. The following is a summary of all of the changes in RMP-0056:

Article 1: R12-1-107 details the ramifications of deliberate misconduct involving radiation sources. A person will not have to be a licensee or registrant to be affected by this rule.

Article 3: R12-1-311, the requirements for a specific license to manufacture, assemble, repair, or distribute commodities, products, or devices which contain RAM is updated to include current NRC standards. License termination procedures are added to R12-1-319.

Article 4: R12-1-407 is being amended to include a new ALARA standard for radioactive

gas emissions. R12-1-413 is being amended to require licensees to notify the Agency of planned special exposures. R12-1-416 is amended to exclude any radiation exposure from out-patient therapy patients when determining whether the exposure to the general public has been exceeded. R12-1-419 is updated to include NRC exposure standards for minors and declared pregnant women. R12-1-439 is amended to include the latest standards regarding transfer for disposal, and manifests involving RAM. R12-1-450 is updated to allow a device that contains RAM to be inventoried, rather than taking the device apart to see the source, if the licensee is absolutely certain the radiation source has not been tampered with. R12-1-451 and R12-1-452 are added to Article 4 to address safety concerns associated with termination of licensed operations involving RAM. These rules regulate license termination in conjunction with R12-1-319.

Article 5: This Article is revised to contain some of the standards found in NRC 10CFR 34. The individual changes are too numerous to list. These changes complement changes that were previously presented in RMP-0054 and future changes planned for RMP-0058. A regulation that has been dropped is the required field audit, however, the licensee is required to perform an annual review of the entire program in meeting R12-1-407. A noteworthy change that the Agency is adding is the requirement for all RAM radiography programs to notify the Agency of daily field operations to aid the Agency in finding field operations for inspection purposes.

Article 6: R12-1-612 is amended to require a technique chart for both adult and pediatric

patients at the CT radiography console, when applicable.

Article 7: R12-1-703 and R12-1-704 are amended to clarify whom is qualified to supervise and use RAM. R12-1-706, R12-1-712, and R12-1-713 are amended to give some regulatory relief without diminishing the level of safety offered to patients and handlers of the RAM. The first amendment will allow small hospitals to use radioactive material without a radiation safety committee to oversee operations. The second rule allows licensees to inventory sealed sources on a six month basis rather than quarterly. The third rule will allow licensees, who use RAM in unit doses to operate without a dose calibrator to check dosages prior to injection. R12-1-716 is amended to more clearly define the qualifications of the person performing the duties of the qualified expert, who maintains a teletherapy unit.

Article 8: This Article has undergone an extensive review against current Suggested State Regulations. The review has brought to light a number of deficiencies addressed in the rule package. New rules include standards for surveys, postings, and training.

Article 10: The title needs a single change to correctly reflect its association with ionizing radiation users. Because the title's language is to broad, a person can easily be mislead to believe that nonionizing registrants, as well as aforementioned users, are regulated under this Article.

Article 11. This Article is new. The rules affecting users of industrial radiographic x-ray systems are not new, however. They are moved from Article 5 for clarity and understandability purposes. The comments made concerning Article 5 apply to

the rules in this Article as well. Therefore, no other comments are made in this report about Article 11. It is simply a recodification.

Article 12: R12-1-1215 is undergoing a few minor changes to clarify the rule for persons entering the state under reciprocal recognition.

Article 17: This Article is undergoing a number of NRC updates. Federal regulations are being added that will affect new technologies, that are defined in R12-1-1701. Other rules in this article are revised to take on the language and format used by the NRC. New rules included in this update are R12-1-1724, radioactive contamination safeguards; R12-1-1725, regulation of uranium sinker bar use; R12-1-1726, regulation of energy compensated sources; R12-1-1727, regulation of tritium neutron generator target sources; R12-1-1728, regulation of sealed sources used in a well without a surface casing; and R12-1-1751, which sets standards for lost and abandoned sources. All of the rules under revision are being revised to meet the standards in 10CFR 39.

2. Name and address of Agency personnel available to provide additional information concerning this statement:

Name: Aubrey V. Godwin, Director

Address: Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, Arizona 85040

Telephone Number: (602) 255-4845 Ext. 222

Fax Number: (602) 437-0705

B. Economic, small business and consumer impact statement:

1. Proposed rulemaking.

The rule changes resulting in the increased or additional costs are described in the above summary.

2. An .identification of those persons directly affected by the rules.

As required in A.R.S. §41-1055(B)(2) through (5)(b) the following is offered: in describing the expected impact on those affected by the amended rules.

Article 1

- The Agency should not be affected by the changes being made to the definitions in Article 1. Because little misconduct is expected, based on historical activities, little impact on the Agency is expected from the addition of R12-1-107. No increased costs will result from the proposed changes. The Agency is unsure as to the number of persons that will be affected by this rule. Two incidents that may have been affected by this rule in the past 20 years, come to mind. It is unlikely that many violations will be issued against this rule.
- Other agencies should not be affected by the addition of and changes to the definitions in Article 1. Again, because there is little misconduct, other Agencies will be affected minimally by the addition of R12-1-107. .
- Political subdivisions will be affected minimally, as noted above.
- Costs to all businesses small or otherwise, will not be affected by the changes to the definitions. Also, the effect of R12-1-107 should be as

previously noted, however, if misconduct becomes an issue, a licensee, a registrant, or a member of the public could be greatly impacted if they are caught misusing a radiation source. The misconduct could result in a civil penalty, and later greatly affect the person's ability to benefit from the use radiation in the normal course of business.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)© and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally. The probable cost to private persons and consumers should be nonexistent to minimal, provided deliberate misconduct does not become a regulatory issue. The severity of the violation will dictate the economic impact.
- The proposed changes will have little, if any, effect on state revenues.
- A less intrusive or less costly method has not been investigated. It is believed this is unnecessary based on the nature of this new rule.

Article 3

New standards are added to R12-1-311 to regulate persons transferring devices containing radioactive material to "generally licensed" persons. At this time there are two licensees that distribute radioactive material to generally licensed persons. Only one of these companies actually distributes devices affected by the rule change. R12-1-319 is amended to reference new standards for license termination being added to Article 4.

- The Agency should not be affected by these changes. No increased costs will result from the addition of the manufacturing standards to R12-1-311 and termination standards to R12-1-319. There are no licensees affected by the licensing standards proposed for R12-1-311. Also, the Agency should not realize any affects from the new termination standards in R12-1-319.
- Other agencies and other political subdivisions should not be affected because they are not in the business of manufacturing the affected devices, nor are they simply radioactive material licensees that possess radioactive material that could result in a major license termination expense..
- Costs to all businesses from the changes to R12-1-311 and R12-1-319 have the potential for being burdensome, however, the potentially affected businesses are already regulated and are therefore familiar with similar manufacturing and license termination standards. Although there are 10-20 licenses terminated annually, there are no businesses in Arizona that manufacture the devices affected by the proposed rulemaking in R12-1-311. It is important to note that adequate termination practices are being practiced by the Agency through the use of license commitments and conditions.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)©) and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because of the previously existing minimal impact noted in this

report.

- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated. It is believed this is unnecessary because of the minimal affect the new rules will probably have on the regulated community. Familiarity with new requirements already exists. This is very evident by the lack of interest in the rule changes in the comments provided to the Agency.

Article 4

- Definitions are added to R12-1-403 that will have little effect on the economic status of the affected radiation users, but will aid in understanding the requirements contained in this Article. The amendment to R12-1-407 could potentially result in an increased costs associated with a radiation safety program, but this additional cost is unknown because the Agency does not know how each radioactive gas user will modify their procedures to meet the new ALARA level for airborne radioactive material. The number of industrial users affected by the rule change is two. It is estimated that about 50 medical licensees will be affected by this change. Additionally, the two major universities in the state could be effected, if research involving radioactive gases is conducted.

The reporting requirement for planned special exposures in R12-1-413 will present a minimal administrative cost to the affected licensees. The

licensees are already required to make these records available to the Agency, as required by the NRC. It is important to note that a planned special exposure has never been performed in Arizona. The amendment to R12-1-416 will result in a small administrative cost because of the calculation associated with the release of patients under R12-1-719. The cost of this calculation will be minimal to nonexistent, depending on whether the affected licensee has in-house physics staff.. Amendments to R12-1-418, R12-1-419, R12-1-430, R12-1-439, R12-1-444, and R12-1-445 should have little economic impact with the minor changes being proposed. The standards affected are established by the NRC, and as previously stated, Arizona is modifying the existing language or standards, depending on the affected rule, as required by the NRC Agreement. The number of incidents reported to the Agency under R12-1-445 averages 12-15 reports annually. Over the past 20 years there has been a high of 30 reports and a low of 7 reports. It is important to remember that these reports involve a potential for exceeding a limit, but seldom do.

R12-1-450 is amended for clarification purposes. There should be no additional economic burden resulting from the proposed amendment. R12-1-451 and R12-1-452 are added to include NRC developed standards for terminating radioactive material licenses. The cost associated with termination of a radioactive material use program will change very little

because the Agency is already regulating termination activities, and because there are few licensees in Arizona that will be affected by the new NRC standards. The actual costs are unknown and will vary depending on the amount, form, and radionuclides used by the licensee. Only large users of unsealed sources including universities, manufacturers, large medical centers, and research centers, should be affected under the decommissioning requirements in R12-1-323 and new termination requirements in Article 4. It is assumed fewer than ten licensees in Arizona will be impacted by the termination rules. In past rulemaking, the Agency has made every effort to protect the state and its citizens from the costs and radiation hazards associated with the termination of licensed programs. An applicant is required to submit a decommissioning plan to the Agency with the application for a license, as required in R12-1-323. With the decommissioning plan the Agency is requiring licensees comply with a termination standard that is addressed in the license application.

- The Agency should not be affected by the changes in Article 4.
- Other agencies and other political subdivisions should not be affected unless they are licensees actively using radioactive material in their course of business. (See discussion affecting universities below)
- Increased costs to all businesses from the changes is expected to be minimal because few licensees are affected and the few affected businesses are already regulated and are familiar with the requirements in

the proposed rulemaking. In the past the radiation safety issues were addressed in license conditions. As stated earlier in this section, costs associated with termination are addressed at the time of application. The affected applicant is required to demonstrate their ability to pay for a facility cleanup, often using a surety bond. To summarize, a university's cost associated with termination will be paid by the State. Other affected licensees will be required to demonstrate a financial ability to pay for a potential cleanup of their site upon termination or closure. In most cases, the cost is several hundreds of thousands of dollars to millions of dollars. A license will not be issued if the applicant does not have money available or a surety bond to pay for these costs, because the Agency will not allow the costs to default to the citizens of Arizona.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)©) and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because of the previously described minimal impact and NRC compatibility issues.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated for reasons already cited.

Article 5

- With the exception of R12-1-525, Article 5 is undergoing a major revision

to keep Arizona compatible with NRC standards in 10 CFR 34. It is doubtful, even with the extensive changes, that any significant costs will result from these amendments because all seven of our licensees contract for work throughout the United States and hire employees that are familiar with national standards. In fact, the mandatory certification exam that radiographers have been taking to function in Arizona is based on the federal standards that make up the proposed rules. There is one exception to this discussion on costs. It deals with the employment of a qualified radiography Radiation Safety Officer (RSO). The Agency will be grand-fathering in the existing active RSO's. It is believed the new standards may result in higher salaries for the newly qualified RSO's. The new requirements for an RSO is in R12-1-512. Finally, these federal radiography standards have undergone extensive national review and have already been adopted by most Agreement States. R12-1-525 is added by the Agency to assist in performing meaningful safety inspections of radiography field operations. The cost to the licensee should only be the time and expense of faxing a current radiography daily work schedule to the Agency. The cost associated with this activity should be minimal for licensees and nonexistent for x-ray radiographers.

- The Agency should see no additional administrative costs associated with the proposed changes. The cost of implementing the new rules is expected to be quite small when compared to cost of enforcing Arizona's

current radiation safety rules. As yet, the actual cost to the Agency has not been determined. Little change is expected with all of the new rules, with the exception of R12-1-525. R12-1-525 is expected to make the inspection staff more efficient by ensuring that each trip to the field will result in a meaningful inspection of the radiographers and additional time to conduct other overdue inspections. Less time will be wasted looking for field operations which results in more time for safety inspections.

- Other agencies should be affected minimally. The Article 5 amendments may have some effect on agency operation if the agency is a radiography licensee, however, there are no agency licensees of this type at this time.
- Political subdivisions should be affected similar to "other agencies" above. there are no political subdivision radiography licensees at this time.
- Costs to all businesses, small or otherwise, are as noted in the above summary. In most cases, Arizona radiographers have already instituted most, if not all, of the radiation safety procedures that are addressed in the proposed rules. The new rules will aid in standardizing the requirements so that licensees functioning anywhere in the US will have to meet a common level of safety.
- The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)©) and (d), (6) and (7):
- The Agency has not developed methods to reduce the affect of the NRC changes on small businesses because the addition of these rules is part of

the previously described NRC Agreement. In terms of radiography, the NRC standards are normally very stringent. It is believed the new level of safety gained by the public far out-weighs the minimum cost to the licensee for implementing the new rules.

- As previously implied, the proposed changes will have minimal effect on state revenues.
- A less intrusive or less costly method has not been investigated because the NRC does not offer any choices when imposing a rule change, and because the proposed changes have minimal to no effect on the cost of doing business by the affected radiographers.

Article 6

- The change to R12-1-612 will require the posting of both an adult and a pediatric technique chart near the operating console of a Computerized Tomographic (CT) radiography unit. The technique information should be readily available in most CT facilities. The cost should be minimal for this minor administrative function, if performed by a technologist using the protocols established by the qualified expert. The procedure normally require about 45 minutes to complete and a technologist earns about $20-30 per hour. If performed by a consulting physicist the cost could be substantially higher at about $400 per visit.
- Other agencies should not be affected. Agencies do not normally use a CT, and for that matter are not involved in the practice of medicine.

- Political subdivisions should not be affected. They do not typically perform medical procedures.
- As noted above, the cost to all medical businesses, small or otherwise, should be nonexistent to minimal.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)© and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because there should be no cost associated with the addition of this record keeping requirement.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated. It is believed this is the least expensive and most efficient method for insuring that the correct imaging technique is used.

Article 7

- R12-1-703 is being amended to clarify language associated with physicians using radioactive material regulated under Article 7, and to add qualifications for technologists handling radioactive material under the supervision of a physician. These changes will not result in any additional costs. The cost of employing technologists, meeting specific qualifications established by the Medical Radiologic Technology Board of Examiners (MRTBE), will be addressed when the rules of the MRTBE are amended to reflect the latest change to the MRTBE statutes. The MRTBE has had

technologist standards in rule since January 2004.

R12-1-704, R12-1-706, R12-1-712, R12-1-714, R12-1-716, and R12-1-717 are amended to clarify existing requirements and update procedures to meet current federal standards. There should not be any increase in costs associated with the proposed changes. If anything, costs will decrease. For example, with the changes to R12-1-713 the licensee's costs associated with having to maintain a dose calibrator will no longer exist if the licensee meets the rule criteria.

- The Agency should not be affected. No increased costs will result from the changes.
- Other agencies should not be affected unless they use radioactive material in the practice of medicine. There are no affected agencies at this time.
- Political subdivisions should not be affected unless they are users of radiation sources, as described above. There are no affected political subdivisions at this time.
- Costs to all businesses, small or otherwise, should be nonexistent, as noted above. In many cases cost will go down. Review of these changes by the NRC has determined that the noted deregulation will not be harmful to public safety..

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)©) and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated, because of the less-regulatory nature of the proposed changes and because most of the changes are NRC required.

Article 8

- A five-year review recently conducted on Article 8 produced a number of changes that will not result in any significant economic impact. The majority of changes were made for clarification purposes and to bring Arizona's analytical x-ray rules up to Conference of Radiation Control Program Directors (CRCPD) standards. Also, R12-1-807, R12-1-808, and R12-1-809, are being added as new rules, and should not result in any significant economic impact. Adequate surveys and postings are already required by Article 4, while training is required in Article 10. These new rules simply clarify and specify the details of each of these activities.
- The Agency should not be affected. No increased costs will result from the needed changes.
- Other agencies should not be affected unless they use analytical x-ray equipment.
- Political subdivisions should not be affected unless they use analytical x-ray equipment.

- Costs to all businesses, small or otherwise, should be nonexistent to minimal with the proposed changes. Most users are already attuned to Article 8 rules, and are aware of the new requirements involving surveys, postings, and training..

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)© and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally. The probable cost to private persons and consumers should be nonexistent to minimal.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated, because the proposed changes will have little effect on radiation user activities. The rule changes are the least expensive and most effective method for insuring radiation safety when using analytical x-ray equipment.

Article 10, 12, and 13

- Changes to Article 10, 12, and 13 are made for clarification purposes as a result of a five-year review. The changes should not result in any economic impact
- The changes will have little economic impact on the Agency. No increased costs will result from the needed changes discovered during the five-year review, and associated comparison to the most current CRCPD

Suggested State Regulations and NRC regulations.

- Other agencies should not be affected unless they are radiation users.
- Political subdivisions should not be affected unless they are radiation users.
- Costs to all businesses, small or otherwise, should be nonexistent to minimal.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)© and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally. The probable cost to private persons and consumers should be nonexistent to minimal.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated, because of the nature of the proposed changes and the little effect the changes will have on regulated activities.

Article 17

- Article 17 has a number of changes that may impact persons that operate well logging/wireline businesses or use the services of well logging/wireline businesses. The changes to this article arise from a five-year review that included a review against NRC and CRCPD standards. The changes are grouped together according to their potential impact. The

definitions in R12-1-1701 are new and will help the reader understand the new rules. They have no economic impact. The amendments to R12-1-1715, R12-1-1718, R12-1-1723, and R12-1-1751 are made to bring the rules up to current standards and should have little additional economic impact on the affected parties. The new regulations in R12-1-1725, R12-1-1726, and R12-1-1727 may result in an economic impact for licensees in the future, because no licensees are performing these well logging activities in Arizona. Because there are only three active well logging companies in Arizona, the future impact may be small. Additionally, there may be two companies that come into Arizona under reciprocity to conduct activities of this type. The potential associated costs of doing the logging are expected to be small when shallow water holes are logged, which is the most common regulated activity in Arizona. There are no deep petroleum wells in Arizona that could be affected by the higher costs associated with a failed safety system. Finally, R12-1-1724, R12-1-1726, R12-1-1727, and R12-1-1728, which are new, offer the greatest potential for economic impact. The actual amount of the impact is not easily determined. Costs are dependent on the amount of radioactive material in the radiation source, hole size, hole depth, and location of the hole. Also, getting a hole ready for logging by casing is costly. The cost of casing a hole is as follows:

A typical hole is 28 inches in diameter with an 18-20 inch casing.

The hole, typical 1000 to 2000 feet deep, is drilled to access a potable aquifer. Cost varies from $260,000 for a 1000 foot hole to $410,000 for 2000 foot hole. Today only about 5% of all holes drilled are not cased. This rate of casing has been in effect for about eight years. Water holes that are not typically cased are of low volume or poor quality.

The main reason holes are drilled in Arizona is to access potable water. Other holes may be drilled to access mineral ores or to store gas or water for later use. These holes are not generally cased unless a potable aquifer is involved in the drilling area.

The radiation source is used to evaluate the geology in the vicinity of the hole. It is important to remember that the potential for contamination is greatest if safety procedures are not followed when the source is down hole, or if proper procedure is not followed in retrieving a source that is stuck down-hole. This is why it is so important for Agency inspectors to evaluate well logging activities to insure that the licensee is following the commitments in the license application and Arizona rules. It is also the Agency's responsibility to ensure that the licensee is able to decontaminate a well site if a sealed source capsule is breached.

In a past incident outside of Arizona, the cost associated with the cleanup of a leaking well logging source was in excess of a million dollars. To

protect aquifers, well holes must be cased. Failure to properly case a hole can result in contaminated drinking water, in addition to the contaminated well site. Therefore, it is believed the cost associated with casing a hole may add additional cost , but the cost is actually quite small compared to the cost of a cleanup resulting from a breached source and a contaminated aquifer.

- The Agency should be affected minimally under normal conditions. No increased costs will result from the changes. However, in response to a breached source emergency, the Agency would have to realize a substantial amount of staff overtime at $20-30 per hour. The extent of the impact would depend on the extent of contamination and associated hazard to the public.
- Other agencies should not be affected unless they perform well logging. Currently, there are no Agencies using well logging sources.
- Political subdivisions should not be affected unless they perform well logging. Currently, the are no political subdivisions using well logging sources.
- Costs to all businesses, small or otherwise, will be affected as noted above. However, it is important to note that holes are already being cased as needed. Therefore, the impact of the new casing rules is minimal. It is also important to note that there are no licensees in Arizona using energy compensated sources (ECS) and neutron generator sources, which require

cased holes or approval of the Agency to use them in open holes.

The following is offered in summary to the requirements in A.R.S. §41-1055(B)(5)© and (d), (6) and (7):

- The Agency has not developed methods to reduce the impact on small businesses because the changes impact small business operations minimally. The probable cost to private persons and consumers has already been realized over the previous casing history. This amount has not been determined. The cost is typically spread over a large number of municipal water users.
- The proposed changes will have no effect on state revenues.
- A less intrusive or less costly method has not been investigated, because the Agency believes casing is the only alternative. Therefore, it is believed the new rules are the least expensive and most effective method for insuring radiation safety.

C. Availability of reasonable data supporting the economic impact statement for adoption of the proposed rules:

In regard to all of the proposed changes, the data supporting the findings are located in Part A and B of this report. " Minimal" is used extensively throughout this report. It and other value judgements are a best guess estimate based on staff experience at the Agency and as previous experience as members of the regulated community. It should be noted that the cost and current duration of casing logging holes were obtained from a Phoenix

engineering firm. All of the well boring information in this report was obtained from this company.

The Agency feels this rule package will not substantially affect the ability of a licensee to conduct normal business, or impact business interests of the affected licensee. A matrix describing the affects of the changes follows:

COST BENEFIT ANALYSIS MATRIX

DOCKET NUMBER RMP-0056

TITLE 12, CHAPTER 1, ARTICLES 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, AND 17

RULE	ACTION	DIRECTED AT	IMPACT ON AGENCY	IMPACT ON OTHER AGENCIES	IMPACT ON POLITICAL SUB.	IMPACT ON PRIVATE PERSONS/CONSUM.	DEV. TO REDUCE COST	METHODS STATE REVENUES	EFFECT ON METHOD	LESS INTRUSIVE INVESTIGATE
102	Amend	Regulated community	None	None	None	None	No attempt	None		Not investigated
107	New sec.	Regulated community	None	Possible	Possible	Possible//	No attempt	None		Not investigated
community										
311	Amend	RAM licensees	None	None	None	Possible	No attempt	None		Not investigated
319	Amend	RAM licensees	None	Possible	Possible	None	No attempt	None		Not investigated
403	Amend	Regulated Community	None	None	None	None	No attempt	None		Not investigated
407	Amend	Regulated community	None	None	None	None	No attempt	None		Not investigated
413	Amend	RAM licensees	None	None^	None^	None^	No attempt	None		Not investigated
416	Amend	Regulated community	None	None^	None^	None^	No attempt	None		Not investigated
418	Amend	Regulated community	None	None^	None^	None^	No attempt	None		Not investigated
Community										
419	Amend	Regulated community.	None	None^	None^	None^	No attempt	None		Not investigated
430	Amend	Regulated community	None	None^	None^	None^	No attempt	None		Not investigated
439	Amend	RAM licensees	None	None^	None^	None^	No attempt	None		Not investigated
of AZ										
444	Amend	Regulated community	None	None^	None^	None^	No attempt	None		Not investigated
445	Amend	Regulated community	None	None^	None^	None^	No attempt	None		Not investigated
450	Amend	RAM licensees	None	None	None	None	No attempt	None		Not investigated
451.	New sec.	RAM licensees	None	Possible*	Possible*	Possible*	No attempt	None		Not investigated

COST BENEFIT ANALYSIS MATRIX

DOCKET NUMBER RMP-0056

TITLE 12, CHAPTER 1, ARTICLES 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, AND 17

RULE	ACTION	DIRECTED AT	IMPACT ON AGENCY	IMPACT ON OTHER AGENCIES	IMPACT ON OTHER POLITICAL SUB.	IMPACT ON PRIVATE PERSONS/CONSUM.	DEV. TO REDUCE COST	METHODS STATE REVENUES	EFFECT ON METHOD	LESS INTRUSIVE INVESTIGATE
452	New sec.	RAM licensees	None	Possible*	Possible*	Possible*	No attempt	None		Not investigated
502	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										
504	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										
505	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										
506	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
507	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
508	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										
509	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
510	Amend	Ind. Radiographers	None	None	None	Small	No attempt	None		Not investigated
512	Amend	Ind. Radiographers	None	Possible	Possible	Possible	No attempt	None		Not investigated
513	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
515	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										
516	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
517	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
522	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
523	Amend	Ind. Radiographers	None	None	None	None	No attempt	None		Not investigated
citizens										

workers									
805	Amend	Analytical x-ray users	None	None	None	None	No attempt	None	Not investigated
workers									
806	Amen	Analytical x-ray users	None	None	None	None	No attempt	None	Not investigated
workers									
807	New sec	Analytical x-ray users	None	None	None	None	No attempt	None	Not investigated
workers									
808	New sec	Analytical x-ray users	None	None	None	None	No attempt	None	Not investigated
workers									
809	New sec	Analytical x-ray users	None	None	None	None	No attempt	None	Not investigated
workers									
1215	Amend	Rad users	None	None	None	None	No attempt	None	Not investigated
1302	Amend	rad users	None	None	None	None	No attempt	None	Not investigated
1701	New sec	Well loggers	None	None	None	None	No attempt	None	Not investigated
1702	Amend	Well loggers	None	None	None	None	No attempt	None	Not investigated
1715	Amend	Well loggers	None	None	None	None	No attempt	None	Not investigated
1718	Amend	Well loggers	None	None	None	None	No attempt	None	Not investigated
AZ									
1723	Amend	Well loggers	None	None	None	None	No attempt	None	Not investigated

COST BENEFIT ANALYSIS MATRIX

DOCKET NUMBER RMP-0056

TITLE 12, CHAPTER 1, ARTICLES 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, AND 17

RULE	ACTION	DIRECTED AT	IMPACT ON AGENCY	IMPACT ON OTHER AGENCIES	IMPACT ON POLITICAL SUB.	IMPACT ON PRIVATE PERSONS/CONSUM.	DEV. TO REDUCE COST	METHODS STATE REVENUES	EFFECT ON METHOD	LESS INTRUSIVE INVESTIGATE
1724	New sec	Well loggers	None	Possible	Possible	Possible	No attempt	None		Not investigated
AZ										
1725	New sec.	W L using sinker bars	None	None	None	None	No attempt	None		Not investigated
1726	New sec.	WL using ECS	None	Possible	Possible	Possible	No attempt	None		Not investigated
1727	New sec.	WL using neutron gen	None	Possible	Possible	Possible	No attempt	None		Not investigated
1728	New sec	Well loggers	None	Possible	Possible	Possible	No attempt	None		Not investigated
1751	Amend	Well loggers	None	None	None	None	No attempt	None		Not investigated

Note: Article 11 is a new Article that contains rules moved from Article 5. Simply put, a recodification of the rules listed in Article 5 of the proposed rule package.

Possible// - Can effect licensee, registrant, or member of the public, whom ever is responsible for the misconduct.

None^ - Possible administrative cost, however it should be minimal.

Possible* - Will only effect a licensee if program is terminated.

Possible - Potential cost depend on activity of the affected person; some cost will only result from misconduct and corrective action..

2009

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

Arizona Radiation Regulatory Agency

Docket No. RMP-0069

Title 12, Chapter 1

Articles 1, 2, 3, 4, 6, 9, 11, 12, 14, 15, and 17

A. Economic, small business and consumer impact summary:

Proposed rule making and summary.

For the rulemaking identified in item 6, there should be minimal increase in costs associated with the administrative changes presented in the affected rules. In all cases the regulated community is already familiar with the regulation of medical x-ray and radioactive material transportation. The regulated community is also very familiar with the need for a source tracking system, instituted as a result of the NRC Agreement. This new requirement is administrative in nature and should result in a minimal cost to the affected licensees.

"Minimal" is used extensively throughout this report, and reflects a possible cost increase of $1000.00 or less.

"Moderate" means a possible cost of $1000.01 to $10,000.00

"Substantial" means a possible cost greater than $10,000.00

B. Economic, small business and consumer impact statement:

Article 1

-The Agency should not be affected by the changes being made to the definitions or updates to the incorporated material in Article 1. No increased costs will result from the proposed changes. Other agencies and political subdivisions possessing radiation sources should not experience an increase in their cost of operation as result of implementing the rule amendments as only definitions and updates to incorporated material were changed for clarity reasons.

-Currently there are approximately 6.600 registrants or licensees in the State of Arizona that use the definitions and incorporated material in Article 1.

-Costs to all businesses, small or otherwise, will not be affected by the addition of the definitions or updated incorporated material as they are for clarity purposes only.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally and the State must remain in compliance with Federal regulations in order to remain an Agreement State.

-There is little or no probable cost or benefit to private persons or consumers as the rules of this Agency are for the public health and safety and regulation of radiation in general and not in regulation of private persons or consumers.

-The proposed changes will have little, if any, effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is unnecessary based on the fact that only definitions and updates to incorporated material are added.

Article 2

-Typing errors, unit designations, and a clarification of services that are non-exempt are corrected in R12-1-201. A clarifying definition of "install" and application information is added in R12-1-203. Clarification on registration and certificate expiration and renewal is added in R12-1-205. Clarification of reporting requirements of component assembly and an incorporated reference is updated in R12-1-206. A grammar error is corrected in R12-1-207. Article 11 is added to the Table in Appendix A. There are no new requirements associated with the changes to Article 2. Current costs are not affected.

-Currently there are approximately 6,600 registrants or licensees in the State of Arizona that use the rules and incorporated material in Article 2.

-Costs to all businesses, small or otherwise, will not be affected by the correction of typos, clarification of existing rules, or updates to incorporated material as they are for clarity purposes only.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because of the previously existing minimal impact noted in this report.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is unnecessary because of the minimal affect the amendments will likely have on the regulated community as compliance with the rules remains in essence the same. Familiarity with requirements by registrants and licensees currently exists.

Article 3

-An additional requirement is added and an omission of the word "and" from the last rule revision is added in R12-1-302. Additional requirements are added concerning exemptions for radioactive material other than source material in R12-1-303. Correction of radiation units; clarification of isotopes not authorized to be manufactured, imported, or exported; the addition of "selenium-75" to be considered when determining the maximum activity for storage or use; and incorporated references are updated in R12-1-306. Clarification of rule applicability and correction of grammatical errors are in R12-1-310. Clarification of rule applicability, deletion of three ineffective subsections only regulated at the federal level, correction of grammatical errors, incorporated reference updates, and the new Nuclear Regulatory Commission requirements for manufacturers of

nationally tracked sources to be serialized are added or corrected in R12-1-311. Clarification of applicability is added in R12-1-313. Typing errors, clarification of records that must be kept, and incorporated references are updated in R12-1-323. Corrections of references to other sections of Title 12, Chapter 1 are made in R12-1-324. The cost associated with the manufacturer's requirement to serialize sources should not change significantly because the regulated community is very familiar with the need for a source tracking system, instituted as a result of the NRC Agreement.

-Currently there are approximately 400 licensees in the State of Arizona that use the rules and incorporated material in Article 3.

-The Agency should not be adversely affected by the rule changes in Article 3. The requirement to involve the public is a simple administrative procedure that is easily met.

-Other agencies and other political subdivisions should not be affected unless they are licensees actively using radioactive material in their business activities.

-Increased costs to all businesses from the changes are expected to be minimal because few licensees are affected and the few affected businesses are already regulated and are familiar with the requirements in the proposed rulemaking. As stated earlier in this section, costs associated with termination are addressed at the time of application.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally and the State must remain in compliance with Federal regulations in order to remain an Agreement State.

-There is little or no probable cost or benefit to private persons or consumers as the rules of this Agency are for the public health and safety and regulation of radiation in general and not in regulation of private persons or consumers.

-The proposed changes will have little, if any, effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is unnecessary based on the fact that clarification language and updates to incorporated material should have minimal or no impact on costs and the Federal reporting criteria that were added should have minimal costs associated.

Article 4

-"Nationally Tracked Source" is added to the definitions in R12-1-403. Corrected editing errors, added a safety issue clarification with location requirements for the use and placement of monitoring devices in R12-1-419. A few clerical and editorial corrections are made in R12-1-422. A clarification of labeling requirements is made in R12-1-431. An incorporated reference is updated and grammatical errors corrected in R12-1-432. An editorial change is made in R12-1-434. A clarification of the disposal requirements is made in R12-1-435. Duplication of referenced sections is eliminated in R12-1-440. A clarification of

who is to be provided with information is made in R12-1-443. A clarification and editorial correction are made in R12-1-446. An editorial correction is made in R12-1-447. A clarification and editorial correction are made in R12-1-448. Corrections of references to other sections of Title 12, Chapter 1 and editorial changes are made for clarification purposes in R12-1-449. Section added to address the new Nuclear Regulatory Commission regulations for Nationally Tracked Sources is in R12-1-454 to meet federal mandates. There should be no additional economic burden resulting from the proposed amendments.

-Currently there are approximately 5,750 registrants or licensees in the State of Arizona that use the rules and incorporated material in Article 4.

-The Agency should not be affected by the changes in Article 4.

-Other agencies and other political subdivisions should not be affected unless they are registrants or licensees actively using individual monitoring devices, or using or transferring large quantities of sources in their business activities.

-Increased costs to all businesses from the changes are expected to be minimal because there is no economically significant change offered to the existing rules.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because of the previously described minimal impact and NRC compatibility issues.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is unnecessary based on the fact that clarification language and updates to incorporated material should have minimal or no impact on costs and the Federal reporting criteria that were added should have minimal costs associated.

Article 6

-"Healing arts radiography" definition is clarified and an addition of "radiologic physicist are made to the definitions in R12-1-602. An incorporated reference is updated and the film processing and darkroom requirements are rewritten for clarity in R12-1-603. Editorial corrections and additional instruction are added for clarification in R12-1-604 for safety and accreditation compliance reasons. Clerical errors and new criteria are added for operation of x-ray machines in R12-1-605. Grammatical changes are made for clarification in R12-1-606. Criteria needed for documentation and retention rewritten in R12-1-607. Wording added for clarification purposes in R12-1-608. Criteria for the dental x-ray control panel rewritten for clarity and general safety reasons in R12-1-610. Typographical errors are corrected in R12-1-611. An exemption was added for CT units designated for simulator use, veterinary use, and non-diagnostic conjunctive use in a PET unit in R12-1-612. Grammatical changes are made to correct terminology and incorporated references are updated in R12-1-614 to bring the rule into compliance with federal requirements for safety reasons for the mammography program. The changes to the affected rules in Article 6 were

brought to the Agency's attention during previous rulemaking. The changes could not be made at that time. The suggested changes will improve radiation safety for patients receiving radiation during diagnostic x-ray procedures.

-Currently there are approximately 4,900 registrants in the State of Arizona that use the rules and incorporated material in Article 6.

-Other agencies should not be affected. They do not typically perform medical procedures.

-Political subdivisions should not be affected. They do not typically perform medical procedures.

-The cost to all medical businesses, small or otherwise, may be from disposal of expired film which should be nonexistent to minimal.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because there should be little if any cost associated with the amendments.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is the least expensive and most efficient method for insuring the highest level of radiation safety relative to the use of x-ray radiation in the practice of medicine.

Article 9

-The term "Authorized medical physicist" was added to the definitions in R12-1-

902. A reference to another subsection is removed and the specific requirements are added for clarification, editorial changes and an incorporated reference are updated in R12-1-904. Registrants are already maintaining records for two years, an addition of a third year brings this rule into alignment with other record retention requirements in Title 12 in R12-1-905. In addition, editorial changes and record keeping time frames are made in R12-1-905. New shielding and safety criteria are being added in R12-1-907. Editorial corrections are made in R12-1-910. Editorial and references to subsections are corrected in R12-1-911. A reference to another subsection is removed and the specific criteria are added for clarification in R12-1-913. The term "Authorized medical physicist" is added for clarification in Appendix A.

-Currently there are approximately 70 registrants in the State of Arizona that use the rules and incorporated material in Article 9.

-The Agency should not be affected. No increased costs will result from the changes.

-Other agencies should not be affected. There are no agencies affected at this time unless they have a registered particle accelerator.

-Political subdivisions should not be affected. There are no political subdivisions with registered particle accelerators at this time.

-Costs to all businesses, small or otherwise, should be minimal, as noted above. Records are required for all radiation users.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c)

and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated. It is believed this is unnecessary based on the fact that clarification language and updates to incorporated material should have minimal or no impact on costs unless a registrant does not have any medical caregivers on their staff that can act as a member of nursing services for the safety committee requirements when using a medical particle accelerator.

Article 11

-More defined criteria are added for the purpose of safety while the systems are in operational mode in R12-1-1142.

-Currently there are approximately 250 registrants in the State of Arizona that use the rules and incorporated material in Article 11.

-The Agency should not be affected. No increased costs will result from the changes.

-Other agencies should not be affected. The safe operation requirement is already in practice at other agencies that may have baggage and package screening units.

-Political subdivisions should not be affected. The safe operation requirement is

already in practice with political subdivisions that may have baggage and package screening units.

-Costs to all businesses, small or otherwise, should be minimal, unless a registrant is operating a baggage and package unit unsafely by bypassing safety equipment on the unit to allow it to run without an operator.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated, because of the minimal effect if any that the amendment will have on the affected registrants that practice safe oversight of x-ray baggage and package units according to federal standards.

Article 12

-The term "depleted uranium" is removed and the remaining terms are alphabetized in R12-1-1215.

-Currently there are approximately 6,600 registrants and licensees in the State of Arizona that use the rules and incorporated material in Article 11.

-The Agency should not be affected. No increased costs will result from the changes.

-Other agencies should not be affected. There are no division III registered or licensed agencies with depleted uranium at this time.

-Political subdivisions should not be affected. There are no division III registered or licensed political subdivisions with depleted uranium at this time.

-A less intrusive or less costly method has not been investigated, because of the minimal effect the deleted category will have on the affected registrants.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated, because of the minimal effect the amendment will have on the affected registrants.

Article 14

-A clarification to the registration time frame requirement is made in R12-1-1401.

-Currently there are approximately 850 registrants in the State of Arizona that use the rules and incorporated material in Article 14.

-The Agency should not be affected. No increased costs will result from the changes.

-Other agencies should not be affected. Any agencies that wish to register nonionizing radiation devices should benefit from this clarification.

-Political subdivisions should not be affected. Any political subdivisions that wish to register nonionizing radiation devices should benefit from this clarification.

-Costs to all businesses, small or otherwise, should be nonexistent, as the time frame is clarified, not changed from existing rules.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because there is minimal impact.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated, because of the minimal effect the clarified timeframe will have on the affected registrants.

Article 15

-The affected transportation rules and incorporated materials are being updated to meet NRC standards. Because users of radioactive material (RAM) are very familiar with the costs associated with its transportation, and paperwork required should generate minimal costs for licensees transporting RAM.

-Currently there are approximately 15 licensees in the State of Arizona that use the rules and incorporated material in Article 15.

-The Agency should not be affected. No increased costs will result from the required changes.

-Other agencies should not be affected. No increased costs will result from the

needed changes.

-Political subdivisions should not be affected. No increased costs will result from the needed changes.

-Costs to all businesses, small or otherwise, should be nonexistent to minimal with the proposed changes. Most users are already aware of costs associated with transportation.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because the changes will not impact the cost of transporting RAM. The additional cost to private persons and consumers should be nonexistent to minimal.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated, because the proposed changes will have little effect on radiation user activities and those transporting hazardous material are already aware of federally mandated requirements.

Article 17

-Editorial changes are made in R12-1-1713. The changes are to existing requirements and should not result in any economic impact.

-Currently there are approximately 12 registrants in the State of Arizona that use the rules and incorporated material in Article 17.

-The changes will have little economic impact on the Agency.

-Other agencies should not be affected unless they are using well logging sources.

-Political subdivisions should not be affected unless they are radiation users. Currently, there are no political subdivisions using well logging sources.

-Costs to all businesses, small or otherwise, should be nonexistent to minimal.

The following is offered in response to the requirements of A.R.S. §41-1055(B)(5)(c) and (d), (6) and (7):

-The Agency has not developed methods to reduce the impact on small businesses because the changes impact their operations minimally. The probable cost to private persons and consumers should be nonexistent to minimal.

-The proposed changes will have no effect on state revenues.

-A less intrusive or less costly method has not been investigated, because of the nature of the proposed changes and the little effect the changes will have on regulated activities.

C. Availability of adequate data supporting the economic impact statement for adoption of the proposed rules:

In regard to all of the proposed changes, the data supporting the findings is located in Parts A and B of this statement. It and other value judgments are a best guess estimate based on staff experience at the Agency and on previous

experience as members of the regulated community.

The Agency feels this rule package will not substantially affect the ability of licensees and registrants to conduct normal business, or impact business interests of an affected licensee. A narrative describing the affects of the changes follows:

Article 1 contains general provisions and materials incorporated by reference. The changes are made to keep Arizona's rules compatible with NRC regulations. The Agency is required to maintain compatible rules as part of the agreement Arizona has with the NRC.

Article 2 contains rules governing registration, installation, and service of ionizing radiation-producing machines; and certification of mammography facilities. The changes are predominately clarifications and corrections of typographical errors. In addition, some changes were made at the request of the Agency compliance inspectors.

Article 3 contains radioactive material licensing standards. A number of changes are made to Article 3 as a result of a five-year review that was approved by GRRC on April 1, 2008. Also, changes are made to keep Arizona's rules compatible with NRC regulations. The Agency is required to maintain compatible rules as part of the agreement Arizona has with the NRC.

Article 4 establishes radiation safety standards that must be met by users of ionizing radiation. Numerous clarifications are made in Article 4 to maintain standards that are compatible with NRC regulations.

Article 6 regulates the use of x-rays in the healing arts. The rulemaking activities in Article 6 are made for clarification of the current regulations and to create compatible rules to the Federal Food and Drug Administrations oversight of x-ray and the mammographic radiation programs.

Article 9 regulates the use of particle accelerators. One new definition is added to Article 9 that will aid in understanding the regulatory standards. Specific instruction for registration and record keeping are in Article 9 for clarification of the current regulations and to create compatible rules to the Federal Food and Drug Administrations oversight of medical accelerator radiation programs. The Appendix A change is to specify the party responsible for verification of the accelerator radiation output.

Article 11 regulates the industrial uses of x-rays. Specific requirements are made to improve the security and safety of baggage and package x-ray units.

Article 12 contains the administrative provisions of a radioactive materials license or registration. One license and registration division is removed; because

currently, there are no depleted uranium users licensed and the category is removed by the NRC.

Article 14 contains the standards for use of nonionizing radiation. This change clarifies the time frame allowed for the registration of a nonionizing radiation source.

Article 15 contains the regulations for transporting radioactive material. Numerous clarifications are made in Article 15 to maintain standards that are compatible with NRC and Department of Transportation regulations.

Article 17 contains the regulations for wireline service operations and subsurface tracer studies. One change is made to clarify that each licensee is responsible for ensuring that transport containers are secured in the transport vehicle.

ARTICLE 17. WIRELINE SERVICE OPERATIONS AND SUBSURFACE TRACER STUDIES

R9-7-1701. Definitions

"Energy compensation source (ECS)" means a small sealed source, with activity that does not exceed 3.7 Mbq (100 microcuries), contained within a logging tool or other tool component.
"Tritium neutron generator target source" means a tritium source contained within a tritium neutron generator tube that produces neutrons for use in well logging applications.

R9-7-1702. Agreement with Well Owner or Operator

A. A licensee that performs wireline service (well logging) with a sealed source shall enter into a written agreement with the employing well owner or operator that identifies the party responsible for complying with each of the following requirements. The responsible party shall:

1. Make a reasonable effort to recover any sealed source that may be lodged in the well;
2. Not attempt to recover a sealed source in a manner which, in the licensee's opinion, is likely to result in its rupture;
3. Perform the radiation monitoring required in R9-7-1723(A);
4. Decontaminate anyone or anything contaminated with licensed material before releasing personnel or equipment from the site or releasing the site for unrestricted use; and
5. If a source is classified by the Department as irretrievable after reasonable efforts at recovery, implement the following requirements within 30 days:
    a. Immobilize the irretrievable well logging source and seal it in place with a cement plug;
    b. Provide a means to prevent inadvertent intrusion that could damage the source, unless the site is rendered inaccessible to subsequent drilling operations; and
    c. Mount a permanent identification plaque, constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel, in a conspicuous location adjacent to the well. The responsible party shall ensure that the plaque size is at least 17 cm (7 inches) square and 3 mm (1/8 inch) thick and the following information is written on the plaque:
        i. The word "CAUTION,"
        ii. The radiation symbol (the color requirement in R9-7-428(A) does not apply),
        iii. The date the source was abandoned,
        iv. The name of the well owner or operator that employed the licensee;
        v. The well name and identification number or other designation,
        vi. An identification of each source by radionuclide and quantity of radionuclide,
        vii. The depth of the source and depth to the top of the plug, and
        viii. The following warning, "DO NOT RE-ENTER THIS WELL," and
    d. Notify the Oil and Gas Conservation Commission, Department of Water Resources,

or Department of Environmental Quality of the abandoned source, as required by law.

B. A licensee shall maintain a copy of the agreement at the field station during logging operations. The licensee shall retain a copy of the written agreement for three years after completion of the well logging operation.

C. A licensee may apply in accordance with A.R.S. § 30-654(B)(13) for Department approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in subsection (A)(5).

D. A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are employed by the same corporation or other business entity. If so, the licensee shall comply with the requirements in subsections (A)(1) through (A)(5).

R9-7-1703. Limits on Levels of Radiation

A person in possession of any source of radiation shall transport the source according to 9 A.A.C. 7, Article 15, and use or store the source in a manner that is consistent with the dose limits in 9 A.A.C. 7, Article 4.

R9-7-1712. Storage Precautions

A. A person storing or transporting a source of radiation shall place the source in an approved storage container, transport container, or both. The container or combination of containers shall have a lock, or tamper-proof seal for calibration sources, to prevent unauthorized removal of the source and exposure to radiation.

B. A person storing or transporting a source of radiation shall store the source in a manner that will minimize danger from explosion or fire.

R9-7-1713. Transportation Precautions

Each licensee shall ensure that transport containers are physically secured in the transporting vehicle to prevent accidental movement, loss, tampering, or unauthorized removal.

R9-7-1714. Radiation Survey Instruments

A. A licensee shall maintain at each field station and temporary job site a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation. The licensee shall ensure that the radiation survey instrument is capable of measuring 1.0 microsievert (0.1 millirem) per hour through 500 microsievert (50 millirem) per hour.

B. A licensee shall ensure that additional calibrated and operable radiation detection instruments are available as needed and that the instruments are sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source is ruptured.

C. A licensee shall ensure that the radiation survey instrument required in subsection (A) is calibrated

1. At intervals not to exceed six months and after each instrument servicing;

2. At energies comparable to the energies of the radiation sources used;
3. For linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale or for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and
4. So that accuracy within plus or minus 20 percent of the true radiation level can be demonstrated on each scale.

D. A licensee shall retain calibration records for a period of three years from the date of calibration.

R9-7-1715. Leak Testing of Sealed Sources

A. A licensee that uses a sealed source shall ensure that the source is tested for leakage according to subsection (C). The licensee shall maintain a record of leak test results in units of Becquerels (Bq) or microcuries, for inspection by the Department for three years after the leak test is performed.

B. A person authorized under R9-7-417(C) shall wipe a sealed source using a leak test kit or a similar method approved by the Department, the NRC, or another Agreement State. The authorized person shall take the wipe sample from the nearest accessible point to the sealed source where contamination might accumulate, and ensure the wipe sample is analyzed for radioactive contamination. The authorized person shall use a method of analysis capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample.

C. Test frequency.
1. A licensee shall ensure that each sealed source (except an energy compensation source (ECS)) is tested in accordance with R9-7-417. In the absence of a certificate from a transferor that a test has been performed within six months before transfer, a licensee shall not use the sealed source until it is tested.
2. A licensee shall ensure that each ECS that is not exempt from testing under subsection (E) is tested at intervals that do not exceed three years. In the absence of a certificate from a transferor that a test has been performed within three years before transfer, a licensee shall not use the ECS until it is tested.

D. Removal of leaking source from service.
1. If a test conducted according to this Section reveals the presence of 185 Bq (0.005 microcuries) or more of removable radioactive material, a licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by a Department, a NRC, or an Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if the equipment is contaminated, have it decontaminated or disposed of by a Department, a NRC, or an Agreement State licensee that is authorized to perform the chosen function.
2. A licensee shall submit a report to the Department, within five days of receiving positive test results. The report shall describe the equipment involved in the leak, the test results, any contamination that resulted from the leaking source, and each corrective action taken up

to the date on the report.

E. The following sealed sources are exempt from the periodic leak test requirements in subsections (A) through (D):

1. Hydrogen-3 (tritium) sources;
2. Sources that contain licensed material with a half-life of 30 days or less;
3. Sealed sources that contain licensed material in gaseous form;
4. Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and
5. Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

R9-7-1716. Inventory

A licensee shall conduct a physical inventory every six months to account for all licensed material received and possessed under the license. The licensee shall maintain records of the inventory for three years from the date of the inventory for inspection by the Department. The inventory shall indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of each individual who conducted the inventory. Physical inventory records may be combined with leak test records.

R9-7-1717. Utilization Records

Each licensee shall maintain records of use for three years from the date of the recorded event, that contain the following information for each source of radiation:

1. Make, model number, and serial number or a description of each source of radiation used;
2. The identity of the well-logging supervisor or the field unit to which the source is assigned;
3. Locations and dates of use; and
4. In the case of tracer materials and radioactive markers, the radionuclide and activity undertaken in a particular well.

R9-7-1718. Design and Performance Criteria for Sealed Sources

A. A licensee shall use a sealed source for well logging applications if the sealed source:

1. Is doubly encapsulated;
2. Contains licensed material in a chemical and physical form that is insoluble and nondispersible; and
3. Meets the requirements of subsection (B), (C), or (D).

B. For a sealed source manufactured on or before July 14, 1989, a licensee may use a sealed source in well logging applications that meets the requirements of USASI N5.4-1968, Classification of Sealed Radioactive Sources, available from the American National Standards Institute at 25 West 43rd Street, 4th floor, New York, NY 10036, which is incorporated by reference and on file with the Department, or the requirements in subsection (C) or (D). This incorporation by reference

contains no future editions or amendments.

C. For a sealed source manufactured after July 14, 1989, a licensee may use a sealed source in well logging applications that meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources--Classification, available from the American National Standards Institute at 25 West 43rd Street, 4th floor, New York, NY 10036, which is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

D. For a sealed source manufactured after July 14, 1989, a licensee may use a sealed source in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following required tests:

1. Temperature. The test source is held at -40° C for 20 minutes and 600° C for one hour, and then subjected to a thermal shock with a temperature drop from 600° C to 20° C within 15 seconds.
2. Impact. A 5 kg steel hammer, 2.5 cm in diameter, is dropped from a height of 1 m onto the test source.
3. Vibration. The test source is subjected to vibration in the 25 Hz to 500 Hz range at 5 g amplitude for 30 minutes.
4. Puncture. A 1 gram hammer with a pin, 0.3 cm in diameter, is dropped from a height of 1 m onto the test source.
5. Pressure. The test source is subjected to an external pressure of 1.695 x 107 pascals (24,600 pounds per square inch absolute).

E. The requirements in subsections (A), (B), (C), and (D) do not apply to a sealed source that contains licensed material in gaseous form.

F. The requirements in subsections (A), (B), (C), and (D) do not apply to an energy compensation source (ECS).

R9-7-1719. Labeling

A. A licensee shall mark each source, source holder, or logging tool that contains radioactive material with a durable, legible, and clearly visible marking or label, consisting at minimum of the standard radiation caution symbol, without the conventional color requirement, and the following wording:

DANGER (or: CAUTION)

RADIOACTIVE

This labeling is required for each component transported as a separate piece of equipment regardless of size.

B. A licensee shall permanently attach to each transport container a durable, legible, and a clearly visible label consisting at minimum, of the standard radiation caution symbol and the following wording:

DANGER (or: CAUTION)

RADIOACTIVE

NOTIFY CIVIL AUTHORITIES (or name of company)

R9-7-1720. Inspection, Maintenance, and Opening of a Source or Source Holder

A. Each licensee shall visually check source holders, logging tools, and source handling tools for defects before each use to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the licensee shall remove equipment from service until it is repaired, and make a record listing: date of check, name of inspector, equipment involved, each defect found, and repairs made. The licensee shall maintain each record for three years after a defect is found.

B. Each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If any defect is found, the licensee shall remove the equipment from service until it is repaired, and make a record listing; date of inspection, equipment involved, inspection and maintenance operations performed, each defect found, and each action taken to correct a defect. The licensee shall maintain each record for three years after a defect is found.

C. A licensee shall not remove a sealed source from a source holder or logging tool, or perform maintenance on a sealed source or source holder that contains a sealed source without written permission from the Department.

D. If a sealed source is stuck in the source holder, a licensee shall not perform any operation, such as drilling, cutting, or chiseling, on the source holder unless the licensee is specifically authorized to perform the operation by the Department.

E. The opening, repair, or modification of any sealed source is prohibited, unless authorized by the Department, the NRC, or an Agreement State.

R9-7-1721. Training

A. A licensee shall not permit an individual to act as a logging supervisor until that person has:

1. Completed training in the subjects outlined in subsection (E);
2. Received copies of, and instruction in:
    a. The applicable rules contained in 9 A.A.C. 7;
    b. The Department license under which the logging supervisor will perform well logging; and
    c. The licensee's operating and emergency procedures, required by R9-7-1722;
3. Completed on-the-job training and demonstrated competence during a field evaluation in the use of licensed materials, remote handling tools, and radiation survey instruments; and
4. Demonstrated understanding of the requirements in subsections (A)(1) and (A)(2) by successfully completing a written test.

B. The licensee shall not permit an individual to act as a logging assistant until that person has:

1. Received instruction in applicable rules of 9 A.A.C. 7;

2. Received copies of, and instruction in, the licensee's operating and emergency procedures required by R9-7-1722;
3. Demonstrated understanding of the materials listed in subsections (B)(1) and (B)(2) by successfully completing a written or oral test; and
4. Received instruction in the use of licensed materials, remote handling tools, and radiation survey instruments that is related to the logging assistant's intended job responsibilities.

C. A licensee shall provide a safety training review for logging supervisors and logging assistants at least once during each calendar year. Each logging supervisor and logging assistant shall attend a safety training review at least once during the current calendar year.

D. A licensee shall maintain a record of each logging supervisor's and logging assistant's initial training and annual safety training review. The training records shall include copies of written tests and dates of oral tests given after the effective date of this Section. The licensee shall maintain the initial training records for three years following termination of employment, and maintain records of each annual safety training review, including a list of subjects covered during the review, for three years.

E. A licensee shall provide instruction in the following subjects in the training required by subsection (A)(1):

1. Fundamentals of radiation safety, including:
    a. Characteristics of radiation;
    b. Units of radiation dose and quantity of radioactivity;
    c. Hazards of exposure to radiation;
    d. Levels of radiation from licensed material;
    e. Methods of controlling radiation dose (time, distance, and shielding); and
    f. Radiation safety practices, including prevention of contamination and methods of decontamination;
2. Radiation detection instruments, including:
    a. Use, operation, calibration, and limitations of radiation survey instruments;
    b. Survey techniques; and
    c. Use of personnel monitoring equipment;
3. Equipment, including:
    a. Operation of equipment, including source handling equipment and remote handling tools;
    b. Storage, control, and disposal of licensed material; and
    c. Maintenance of equipment;
4. The requirements of pertinent federal and state law, and
5. Case histories of accidents in well logging.

R9-7-1722. Operating and Emergency Procedures

Each licensee shall develop operating and emergency procedures on the following subjects:

1. Procedures designed to prevent individuals from being exposed to radiation in excess of the limits in Article 4 of this Chapter. This subject includes:
    a. Use of a sealed source in a well without a surface casing for the purposes of protecting a fresh water aquifer, as appropriate;
    b. Methods employed to minimize exposure from inhalation or ingestion of licensed tracer materials; and
    c. Methods for minimizing exposure of individuals in the event of an accident;
2. Use of remote handling tools for manipulating a radioactive sealed source or tracer;
3. Methods and occasions for conducting a radiation survey;
4. Methods and occasions for locking and securing a source of radiation;
5. Personnel monitoring and the use of personnel monitoring equipment;
6. Transportation of a source to a temporary job site or field station, including packaging and placing the source of radiation in a vehicle, placarding the vehicle, and securing the source of radiation during transportation;
7. Procedure for notifying the Department if there is an accident;
8. Maintenance of records;
9. Inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;
10. Procedure required if a sealed source is:
    a. Lost or lodged downhole; or
    b. Ruptured, including safeguards to prevent job site and personnel contamination, inhalation; and ingestion;
11. Procedures required for picking up, receiving, and opening packages that contain radioactive material; and
12. Procedures required for site and equipment surveys and decontamination following tracer studies.

R9-7-1723. Personnel Monitoring

A. A licensee shall not permit an individual to act as a logging supervisor or logging assistant unless that person wears a personnel dosimeter at all times during the handling of licensed radioactive materials.

B. A licensee shall assign a personnel dosimeter to each individual, who shall wear the assigned equipment.

C. A licensee shall replace film badges at least monthly and replace all other personnel dosimeters that require replacement at least quarterly. After replacement, a licensee shall evaluate all personnel dosimeters at least quarterly or promptly after replacement, whichever is more frequent.

D. A licensee shall provide bioassay services to each individual who uses licensed materials in subsurface tracer studies if required by the license.

E. A licensee shall record exposures noted from personnel dosimeters required by subsection (A) and bioassay results and maintain these records for three years after the Department terminates the radioactive material license.

R9-7-1724. Radioactive Contamination Control

A. If a licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall immediately initiate the emergency procedures required by R9-7-1722.

B. If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all affected areas, equipment, and personnel.

C. During efforts to recover a source lodged in a well, the licensee shall continuously monitor, with a radiation detection instrument that complies with R9-7-1714 or a logging tool with a radiation detector, the well and any circulating fluids from the well to check for contamination resulting from damage to the source.

R9-7-1725. Uranium Sinker Bars

A licensee may use a uranium sinker bar for a well logging application only if it is legibly impressed with the words "Caution Radioactive-Depleted Uranium" and "Notify Civil Authorities (or company name) if Found."

R9-7-1726. Energy Compensation Source

A. A licensee may use an energy compensation source (ECS) in a logging tool, or other tool component, if the ECS contains a quantity of radioactive material that does not exceed 3.7 MBq (100 microcuries).

B. If used in a well with a surface casing, an ECS is subject to all Sections of this Article except R9-7-1702, R9-7-1728, and R9-7-1751.

C. If used in a well logging hole without a surface casing, an ECS is subject to all Sections of this Article.

R9-7-1727. Neutron Generator Source

A. A licensee may use a tritium neutron generator source to produce neutrons for well logging applications.

B. If the activity of a tritium neutron generator source does not exceed 1.11 TBq (30 Curies) and the source is used in a well with a surface casing, the source is subject to all Sections of this Article except R9-7-1702 and R9-7-1751.

C. If the activity of a neutron generator source is equal to or exceeds 1.11 TBq (30 Curies) or the source is used in a well without a surface casing, the source is subject to all Sections of this Article.

R9-7-1728. Use of a Sealed Source in a Well Without a Surface Casing

A licensee may use a sealed source in a well without a surface casing if the licensee follows a procedure for reducing the probability that the source will be lodged in the well. The procedure shall be separately approved by the Department or in a license issued by the Department, the NRC, or another Agreement State.

R9-7-1731. Security

A. A logging supervisor shall be physically present at a temporary job site whenever licensed material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site to obtain assistance if a source becomes lodged in a well.

B. During well logging, except when a radiation source is below ground or in a shipping or storage container, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in R9-7-102.

R9-7-1732. Handling Tools

The licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low-activity calibration sources.

R9-7-1733. Subsurface Tracer Studies

A. Any person who handles radioactive tracer material shall wear protective gloves and other appropriate protective clothing and equipment. Precautions shall be taken to avoid ingestion or inhalation of radioactive material.

B. A licensee shall not inject radioactive material into potable aquifers without authority granted in a radioactive material license issued by the Department.

C. A licensee shall dispose of tracer study waste contaminated with radioactive material in accordance with R9-7-434.

R9-7-1734. Use of a Sealed Source in a Well Without a Surface Casing and Particle Accelerators

A. A licensee or registrant may use a sealed source in a well without a surface casing to protect a fresh water aquifer if the licensee follows the correct procedure for reducing the probability that the source will become lodged in the well.

B. A licensee or registrant shall not begin well logging operations in a well without a surface casing unless the Department has approved the licensee's procedure for logging in an uncased hole.

C. A licensee or registrant shall not permit above-ground testing of a particle accelerator, designed for use in well-logging, which results in the production of radiation, unless the area or facility affected is controlled or shielded in a manner consistent with applicable requirements in Article 4 of this Chapter.

R9-7-1741. Radiation Surveys

A. A licensee shall perform and make a record of a radiation survey using instruments or calculations of radiation levels in each area where radioactive material is stored.

B. A licensee shall make and record a radiation survey using instruments or calculations of radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive material. The survey or calculation shall include each source of radiation or combination of sources to be transported in the vehicle.

C. After removal of the sealed source from the logging tool and before departing the job site, a licensee shall ensure that the logging tool detector is energized, or a survey meter is used to test the logging tool for contamination. The licensee shall record the test for contamination.

D. The licensee shall make and record each survey using an appropriate survey instrument for the radionuclide being used, at the job site or wellhead for each tracer operation, except those using Hydrogen-3, Carbon-14 and Sulfur-35. Each survey shall include measurements of radiation levels before and after each tracer operation.

E. Records of surveys conducted according to subsections (A) through (D) shall include the date of each survey, the identification of each individual making the survey, identification of each survey instrument used, each radiation measurement in millirem or microsievert per hour, and an exact description of the location of the survey. A licensee shall retain records of a survey for three years after completion of the survey.

R9-7-1742. Documents and Records Required at Field Stations

Each licensee shall maintain the following documents and records at the field station:

1. A copy of 9 A.A.C. 7;
2. The license, authorizing use of licensed material;
3. Operating and emergency procedures required by R9-7-1722;
4. The record of radiation survey instrument calibrations required by R9-7-1714;
5. The record of leak test results required by R9-7-1715;
6. Physical inventory records required by R9-7-1716;
7. Utilization records required by R9-7-1717;
8. Records of inspection and maintenance required by R9-7-1720;
9. Training records required by R9-7-1721; and
10. Survey records required by R9-7-1741.

R9-7-1743. Documents and Records Required at Temporary Job Sites

Each licensee that conducts operations at a temporary job site shall maintain the following documents and records at the temporary job site until the well logging operation is completed:

1. Operating and emergency procedures required by R9-7-1722;
2. The most current calibration records for the radiation survey instruments in use at the site required by R9-7-1714;
3. The most current survey records required by R9-7-1741.

4. The shipping papers for transportation of radioactive materials required by license condition; and
5. If operating under reciprocity in accordance with R9-7-320, a copy of the Department authorization for use of radioactive material in Arizona.

R9-7-1751. Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources

A. If, after making a reasonable effort to recover a sealed source or device that contains radioactive material using methods that are not likely to result in damage or rupture and contamination, a licensee determines that the source or device is lodged in a well, the licensee shall:
1. Immediately notify the Department by telephone of the circumstances that resulted in the inability to retrieve the source and, if there is no evidence of contamination, obtain the following from the Department:
   a. A determination that the source is irretrievable and abandonment is necessary because further efforts to recover the source are likely to result in an immediate threat to public health and safety, and
   b. An approval to implement abandonment procedures;
2. Advise the well owner or operator, as applicable, of the abandonment procedures implemented under R9-7-1702(A) and (C); and
3. Either ensure that abandonment procedures are implemented within 30 days after the Department classifies the source as irretrievable or request an extension of time if unable to complete abandonment procedures.

B. A licensee shall immediately notify the Department by telephone and subsequently, within 30 days, by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured or the well has otherwise been contaminated. The letter shall describe the well location, the magnitude and extent of radioactive contamination, the consequences of the rupture, and the efforts planned or initiated to mitigate the consequences.

C. A licensee shall notify the Department of the theft or loss of any radioactive material, radiation overexposure, excessive levels and concentrations of radiation, and incidents as required by R9-7-443, R9-7-444, and R9-7-445.

D. A licensee shall, within 30 days after a sealed source has been classified as irretrievable, report in writing to the Department. The licensee shall send a copy of the report to each state or federal agency that issued permits or otherwise approved of the drilling operation. The report shall contain the following information:
1. Date of occurrence;
2. A description of the irretrievable well logging source involved, including the name of the radionuclide and its quantity, and the chemical and physical form of the radionuclide;
3. Surface location and identification of the well;
4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;
6. Depth of the source;
7. Depth of the top of the cement plug;
8. Depth of the well;
9. The reasons why further efforts to recover the source are likely to result in an immediate threat to public health and safety, necessitating abandonment;
10. Information contained on the permanent identification plaque; and
11. State and federal agencies receiving a copy of the report.

Statutory Authority for Rules in 9 A.A.C. 7, Article 17

30-654. Powers and duties of the department

A. The department may:

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

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

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

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

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

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

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

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

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

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

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

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

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

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

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

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

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

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

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

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

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.**30-**

657. <u>Records</u>

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the

department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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

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.

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 17. Wireline Service Operations and Subsurface Tracer Studies

October 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-672, and 30-673

2. **The objective of each rule:**

Rule	Objective
R9-7-1701	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-1702	To specify the requirements for identifying the party responsible for recovery, monitoring, decontamination, and abandonment procedures related to lost or disconnected well logging sources of radioactivity.
R9-7-1703	To establish the transport, use, and storage requirements of source material in well logging.
R9-7-1712	To specify the requirements for storing or transporting a source of radiation used in well logging.
R9-7-1713	To require that transport containers are physically secured in a transporting vehicle.
R9-7-1714	To require the presence of calibrated and operable radiation survey instruments at every field station and temporary job site, including the sensitivity and calibration parameters.
R9-7-1715	To establish requirements for performing leak testing on sealed sources used by a licensee, including the method and frequency of testing, the removal of leaking sources from services, and the maintenance of records. To specify what sealed sources are exempt from testing requirements.
R9-7-1716	To specify requirements for conducting a physical inventory of all licensed material, including the frequency of inventory, content of records, and maintenance of records.
R9-7-1717	To specify requirements for records of use, including the content of the records and length of retention.
R9-7-1718	To specify the design and performance criteria for a sealed source used in well logging operations.
R9-7-1719	To specify labeling requirements for sources, source holders, logging tools, and transport containers to indicate the presence or possible presence of radioactivity.
R9-7-1720	To establish requirements for inspection of equipment used for well logging before use and according to a program for semiannual inspection and routing maintenance.

	To require that equipment found to have a defect is removed from service until repaired and that a record is made and maintained. To specify restrictions on opening, repair, modification, or tampering with a sealed source.
R9-7-1721	To establish the qualifications and training requirements of a logging supervisor and logging assistant to ensure safe well logging operations. To require annual safety training reviews and maintenance of training records.
R9-7-1722	To require the development of operating and emergency procedures and specify the subject matter to be covered to protect health and safety.
R9-7-1723	To establish requirements for the monitoring of radiation exposure by personnel and for related actions to protect health and safety.
R9-7-1724	To specify requirements for radioactive contamination control to protect health and safety.
R9-7-1725	To establish requirements for use of a uranium sinker bar in well logging to ensure health and safety.
R9-7-1726	To establish requirements for use of an energy compensation source in well logging to ensure health and safety.
R9-7-1727	To establish requirements for use of a neutron generator source in well logging to ensure health and safety.
R9-7-1728	To establish requirements for use of a sealed source in a well without surface casing to ensure health and safety.
R9-7-1731	To specify requirements to ensure the security of areas in which licensed material is being used to protect health and safety.
R9-7-1732	To describe requirements for the use of tools for remote handling of sealed sources.
R9-7-1733	To establish requirements for subsurface tracer studies to ensure health and safety.
R9-7-1734	To establish requirements for use of a sealed source in a well without surface casing to protect a freshwater aquifer to ensure health and safety. To establish requirements for use of a particle accelerator to ensure health and safety.
R9-7-1741	To establish requirements for performing radiation surveys, including the method of testing and the content and maintenance of records.
R9-7-1742	To specify the document required to be maintained at a field station.
R9-7-1743	To specify the document required to be maintained at a temporary job site.
R9-7-1751	To specify the notification requirements for incidents, lost sources, or abandoned sources.

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.

Rule	Explanation

4. **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.

Rule	Explanation

5. **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.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** **Yes ___ No _X_**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. However, Arizona is required by the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967 to be consistent with requirements of the NRC. To comply with the Agreement some requirements in this Article must be identical to federal requirements, regardless of whether the language is clear or not.
R9-7-1701	The rule would be clearer if the term "tritium neutron generator tube" were defined or described.
R9-7-1702	The rule would be clearer if the exception in subsection (D) were included as a lead-in in subsection (A). Subsection (A)(4) would be clearer if it cited to R9-7-1724. Subsection (A)(5) would be more understandable if it cited to A.A.C. R12-7-126 and R12-7-127, referenced a description of how the Department classifies a source as irretrievable, and specified the event initiating the "within 30 days." Subsection (A)(5)(c)(ii) would be clearer and more concise if this exception for the radiation symbol, in addition to sources of radiation subjected to high-temperature, were included in R9-7-428(B), and if the rule were cited to in the subsection. Subsection (A)(5)(d) would be clearer if it cited to the applicable requirements in A.A.C. Title 12, Chapter 7, Article 1 and Title 12, Chapter 15, Article 8. Subsection (B) would be clearer if it contained the cross-reference to subsection (A). Subsection (C) would be clear if it specified how a licensee may apply for approval of an alternate manner to abandon an irretrievable well logging source.
R9-7-1703, R9-7-1712, and R9-7-1713	The rules would be improved if the titles of R9-7-1703 and R9-7-1712 or their content were revised to address an apparent inconsistency. Transport and storage requirements in the three rules might also be better grouped together. However, R9-7-1703 is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1716	The rule would be clearer if the content of the inventory record were in a list, rather than included in a long sentence.
R9-7-1718	The rule would be improved if subsection (A) were changed to clarify that the elements of subsection (A)(1) through (3) are requirements for any sealed source used for well logging applications. The rule would also be improved if the requirements in subsections (C) and (D) were combined. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1719	Subsection (B) would be clearer if it cited to requirements in R9-7-428(A).

R9-7-1720	The rule would be clearer if subsections (A) and (B) were reformatted so they were not as long with multiple sentences. The rule may also be improved if requirements in subsections (C) and (E) were combined.
R9-7-1721	The rule would be clearer if subsections (A)(4) and (B)(3) specified what is "successful" completion of a written/oral test and if the person giving the written test were specified. Subsection (B)(4) could also be improved if it required a logging assistant to demonstrate competence as well as receive instruction. However, the rule is compatibility category B, meaning it must be word-for-word with federal requirements.
R9-7-1722	Subsection (5) could be improved if it cited to R9-7-1723. Subsection (9) would be improved if uranium sinker bars were listed in the rule, consistent with R9-7-1720(B). The rule would also be improved if it contained a requirement for the operating and emergency procedures to be maintained for at least three years past termination, as in other Sections of the Chapter.
R9-7-1722, R9-7-1726, R9-7-1727, R9-7-1728, and R9-7-1734	The rule would be clearer if the term "surface casing" were defined.
R9-7-1723	Subsection (A) would be clearer if it stated "unless that individual wears …" rather than "unless that person wears …". Subsection (B) would be improved if it were clearer whether the requirement is for the licensee to ensure that each individual wears the assigned equipment or whether it is a requirement on the individual to wear the assigned equipment. The rule would also be improved by citing to limits of exposure.
R9-7-1726	Subsection (C) could be improved if it required all "applicable" requirements to be followed.
R9-7-1727	Subsection (C) could be improved if it required all "applicable" requirements to be followed.
R9-7-1728 and R9-7-1734	The rule would be improved if requirements in R9-7-1728 and R9-7-1734 were combined in one Section.
R9-7-1733	Subsection (A) would be improved by removing passive language and specifying who must take precautions.
R9-7-1734	Subsection (A) would be improved if the "correct procedure" were clarified. The requirements for particle accelerators, specified in subsection (C), should it be in its own Section.
R9-7-1741	Subsection (A) would be improved if the rule specified that a radiation survey should be performed where radioactive material is used, as well as where it is stored, and that the instruments used must meet the requirements in R9-7-1714. Subsection (B) would be improved if the term "occupied positions" were described. Subsection (E) would be clearer if the content of the record of survey were in a list, rather than included in a long sentence.
R9-7-1742	The rule would be improved if the agreement required in R9-7-1702 were included in the list.
R9-7-1743	Subsection (4) would be clearer if it included a citation to applicable documentation requirements for shipping radioactive materials.
R9-7-1751	The rule would be improved if it did not imply that only the licensee is making the effort to recover the sealed source or implementing abandonment procedures, since, according to the agreement required according to R9-7-1702, the well owner may be the responsible party. Subsection (A)(2) would be clearer if it stated "under R9-7-1702(A) or (C)" since R9-7-1702(C) refers to an abandonment procedure not authorized in R9-7-1702(A)(5), so the two would be mutually exclusive. Subsection (A)(3) would be clearer if the time-frame for making the request were specified. Subsection (C) would be

	clearer if the three situations requiring notification were listed, with the appropriate cross-reference. Subsection (D) would be clearer if reformatted to better delineate the content and persons receiving the report in the same sentence.

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:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona is an Agreement State by the agreement negotiated between the United States Atomic Energy Commission (now U.S. Nuclear Regulatory Commission (NRC)) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656 (Agreement). In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations, as required in A.R.S. § 30-654(B)(6). When the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency in 2018, the rules in Article 17 were recodified from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules.

The rules in Article 17 were first adopted in 1990, with revisions made and Sections added in five other rulemakings over the ensuing years. No economic impact statements (EISs) are available to the Department for the original rulemaking or three of the subsequent rulemakings, so the economic impact of the Sections made/revised in the four rulemakings was assessed from information in the Notice of Final Rulemaking for the rulemaking, including review of the changes made. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

Currently, the Department specifically licenses only four entities that use the rules in Article 17. An additional three to five entities operate according to these rules under reciprocity. These entities provide services to companies in the oil and gas industries, which use wireline logging to obtain a continuous record of the properties of a rock formation.

The one Section that was made in 1990 and has not been revised in a subsequent rulemaking is R9-7-1732. This rule requires tools to be used when handling higher energy radioactive materials. The cost to the regulated community from this rule would be the purchase and maintenance of these tools. This cost was estimated to be less than the economic impact arising from the damage to the health of an individual handling such a sealed source without tools. The Department believes the economic impact is as estimated.

In a rulemaking effective in 2003, R9-7-1703, R9-7-1712, R9-7-1714, R9-7-1717, R9-7-1719, R9-7-1722, R9-7-1731, R9-7-1733, R9-7-1734, and R9-7-1741 were last revised. No EIS is available for this rulemaking. In all but one of these rules, the changes made as part of the rulemaking were identified in a five-year-review report of the rules and clarify and improve the rules. Thus, they were believed to impose no costs and provide a benefit to stakeholders. In R9-7-1734, requirements for use of a sealed source in a well without a surface casing were

included, which had previously been required as conditions of use in a license, so the economic impact of this change was estimated to be minimal. The Department believes the economic impact is as estimated.

In the first of two rulemakings effective in 2004, nine other rules were newly made and one extensively revised to be consistent with federal requirements to comply with the Agreement. These include defining new technologies; adding radioactive contamination safeguards; including requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing; and adding standards for lost and abandoned sources. An EIS is available for this rulemaking. For most of these changes, little, if any, economic impact was predicted. The EIS stated that no licensees in Arizona were performing well logging activities affected by the new requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing. Therefore, the addition of these requirements was thought to have no current economic impact. However, the EIS stated that an economic effect could possibly occur in the future because these requirements, if conditions/procedures changed. In addition, the costs associated with decontamination and clean-up that may result from not complying with the requirements were stated as being much greater than costs of compliance. Since these rules were adopted, there have been no changes in conditions/procedures related to requirements for uranium sinker bars, energy compensation sources, neutron generator sources, and use of sealed sources in a well without surface casing that have an economic effect, so the Department believes the economic impact is as estimated.

The second rulemaking in 2004 included R9-7-1716, R9-7-1720, R9-7-1721, R9-7-1742, and R9-7-1743. No EIS is available for this rulemaking. These rules were revised to include NRC standards required in 10 CFR 39 and were believed to not result in any increased cost to any affected party. The Department believes the economic impact is as estimated.

In a 2009 rulemaking, only one rule in Article 17, R9-7-1713, was revised, and an EIS is available for this rulemaking. This rule was revised to remove passive language without changing the substance of the rule. Therefore, the rulemaking may have had a very minimal benefit from increased clarity, but no other economic impact was identified. The Department believes the economic impact is as estimated.

The last time any of the rules in Article 17 were amended was in 2022, when requirements in R9-7-1723 were changed through expedited rulemaking to conform to revised requirements of the NRC. The rulemaking made changes in R9-7-1723 to clarify requirements and account for dosimeters that did not require "processing." The Department believes the economic impact is as estimated.

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.

In the 2019 five-year-review report, the Department stated that the Department planned to review the rules in the entire Chapter after completing the five-year-review reports on all Articles in the Chapter, the last of which was

due to the Council in December 2021 and was approved in March 2022. During this review, the Department determined that extensive changes were required throughout the entire Chapter and planned a rulemaking to be completed in stages. The Council approved a plan for the rulemaking of the Chapter, with a Notice of Final Rulemaking to be submitted to the Council no earlier than December 2025. Pursuant to A.R.S. § 41-1039(A), the Department was granted approval to conduct rulemaking in the Chapter. Since 2022, the Department has completed seven rulemakings in the Chapter. Thus, the Department has been complying with the rulemaking plan approved by the Council in March 2022.

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 probable benefits of the rule, in protecting employees, the public, and the environment, outweigh the probable costs of the rule. The Department also believes that the substantive content of the rules are the minimum necessary to meet requirements of the Agreement and protect health and safety. Other issues identified in this report may impose a minor regulatory burden, but they are minor in comparison to the costs of having the NRC assume responsibility for compliance with federal requirements.

12. 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)?

10 CFR 39

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules in Article 17 provide standards and limits for wireline service operations and subsurface tracer studies but do not include the issuance of a license or permit.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department is complying with the rulemaking plan for the Chapter that was approved by the Council in March 2022. This plan stated that the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025. The Department is implementing the plan in an iterative fashion. Rules related to Nonionizing Radiation are expected to be completed by December 2025, while rules related to X-ray Radiation are expected to be completed by July 2026. The Department has been told that the NRC is planning to require rules for decommissioning financial assurance for sealed and unsealed radioactive materials, advanced reactor export licensing considerations, low-level radioactive waste disposal, items containing

byproduct material incidental to production, release criteria of veterinary animals, reporting nuclear medicine injection extravasations as medical events, revisions to the exempt quantity thresholds for licensing, rubidium-82 generators and emerging medical technologies, and the regulatory framework for fusion machines, which will need to be added to our rules for Radiation Control. Because it would be inefficient and confusing to stakeholders/regulated entities for the Department to make changes to the current rules, then add the new requirements from the NRC, the Department wants to make all changes/additions as part of a single iteration of rulemaking for these rules. The Department plans to complete rulemaking for rules that must be consistent with requirements of the NRC by December 2027. Since the rules in Article 17 must be consistent with requirements of the NRC, the Department plans to revise the rules in this Article by December 2027.

E-6.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 24, Articles 2 & 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 24, Article 2 & 3

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers six (6) rules and one (1) table in Title 9, Chapter 24, Article 2 and Article 3 related to Arizona medically under-served areas (AZMUAs). There are 83 designated AzMUAs. Article 2 states the requirements for when a primary care area can be designated as a AzMUA and Article 3 is the function of coordinating medical providers to an AzMUA.

The Department completed its last proposed course of action identified in the 2019 5YRR by completing an expedited rulemaking with an effective date of September 4, 2020.

Proposed Action

The Department does not propose any course of action at this time.

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 Health Services (Department) oversees the designation and regulation of Arizona Medically Underserved Areas (AzMUAs). The rules in 9 A.A.C. 24, Articles 2 and 3 guide the designation process and coordination of medical providers in AzMUAs. The rules were last amended in 2020, focusing on clarity, updated definitions, and consistency with current standards.

The Department has assessed that the Article 2 rules did not impact the Department as expected; and rather than incur minimal costs, the Department incurred no costs. However, the Department did experience the expected impact of the Article 3 rules, and they continue to have no impact on the Department. Stakeholders include political subdivisions of the state, private physicians or dental practices, facilities that provide medical or dental services, consumers and the general public, 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 the rules provide a significant benefit to political subdivisions for having rules that determine primary care area (PCA) boundaries and establish criterion, criterion values, and scoring measures that are used to determine whether a PCA is located in an AzMUA. If a political subdivision is located within an AzMUA, the Department, medical or dental practices, facilities that provide medical or dental services, and consumers and the public may receive a significant benefit. The Department benefits by providing AzMUAs designations that attract health service providers participating in the loan repayment program to physician or dental practices and facilities providing medical or dental services. Having these additional health service providers may increase medical and dental services for consumers living in those areas. The Department and the public benefit significantly from providing or receiving, respectively, health services that increase the health of Arizonians.

Political subdivisions benefit from having AzMUAs that create employment opportunities to health service providers relocating for employment at medical or dental practices and facilities. The presence of more health professionals in these communities not only generates employment opportunities but also enhances access to care for residents. Consumers benefit from having expanded choices for medical and dental services, potentially experiencing improved quality of care due to the increased availability of providers. Local medical and dental practices, as well as health facilities, will also see financial gains through increased revenue from delivering more services locally. This economic boost is further supported by reducing the need for consumers to travel outside the area for care, keeping healthcare spending within the community. The Department believes the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs. The Department has determined that the benefits of the rules outweigh the

costs of the 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 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 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 there are no corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

11. Conclusion

This Five Year Review Report from the Department of Health Services covers six rules and one table in Title 9, Chapter 24, Article 2 and 3 related to Arizona medically underserved areas. The rules are clear, concise, and understandable; effective in meeting their objectives; and consistent with other rules and statutes. The Department has indicated that there is no need for amendments to the rules.

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 22, 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. 24, Articles 2 and 3, 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. 24, Articles 2 and 3, 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

Five-Year-Review Report

Title 9. Health Services

Chapter 24. Department of Health Services – Arizona Medically Underserved Area Health Services

Article 2. Arizona Medically Underserved Areas

Article 3. Coordinating Medical Providers

Due: October 31, 2024

Submitted: October 22, 2024

1. Authorization of the rule by existing statutes

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

Implementing statutes: A.R.S. §§ 36-2352, 36-2353, and 36-2354

2. The objective of each rule:

Rule	Objective
R9-24-201. Definitions	The objective of the rule is to define terms used in Article 2 for consistent interpretation.
R9-24-202. Arizona Medically Underserved Area Designation	The objective of the rule is to provide a statement of how the Department will designate Arizona medically underserved areas.
R9-24-203. Primary Care Index	The objective of the rule is to establish the criterion and criterion values and scoring measures used to determine whether a primary care area determined under R9-24-204 qualifies as an Arizona medically underserved area.
Table 2.1	The objective of the table is to present a matrix showing each criterion used by the Department in designating primary care areas as Arizona medically underserved areas, the value ranges within each criterion, and the points attached to each value within a criterion.
R9-24-204. Primary Care Area Boundaries Determination	The objective of the rule is to establish the Department's requirements for determining the boundaries of primary care areas in the state.

R9-24-301. Definitions	The objective of the rule is to define terms used in Article 3 for consistent interpretation.
R9-24-302. CMP Functions	The objective of the rule is to establish the functions of a coordinating medical provider.

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:

A.R.S. § 36-2352 requires the Department of Health Services (Department) to designate Arizona medically underserved areas (AzMUAs). A.R.S. § 36-2354 authorizes the Department to establish the functions of coordinating medical providers who supervise the medical care offered at a medical clinic in an AzMUA. The rules in 9 A.A.C. 24, Article 2 establish requirements for determining whether a primary care area may be designated as an Arizona medically underserved area and the rules in 9 A.A.C. 24, Article 3 specifies functions for a coordinating medical provider. The rules for Arizona Medically Underserved Areas Health Services were last amended through a Notice of Final Expedited Rulemaking at 26 A.A.R. 1991, effective September 4, 2020. The Department believes that the amendments made in 2020 did not have any additional economic impact on the Department and did not impose any direct costs on any other individual or entity. Additionally, the Department does not know of any medical clinic located in an Az MUA to have used the rules in 9 A.A.C. 24, Article 3 since the last review.

The rule amendments from the 2020 rulemaking included amending the rules to make them clearer and more understandable; updated language; updated practice; and updated definitions and references. The Table was also updated to be more consistent with current formatting standards and content was updated. The amended rules clarified requirements related to the primary care index and the primary care boundaries determination and update obsolete criterion used for designating primary care areas, the value ranges within each criterion, and the points attached to each value within a criterion.

The affected persons previously identified and detailed in the 2019 five-year-review report remain the same. Those are political subdivisions of the state, private physicians or dental practices, facilities that provide medical or dental

services, consumers and the general public, and the Department. Annual costs or revenues also remain the same as previously considered: "minimal" if less than $1,000; "moderate" if between $1,000 and $10,000; and "substantial" if more the $10,000. The 2019 five-year-review report also indicated that the Department added the "significant" designation when meaningful or important, but not readily subject to quantification. This also remains the same.

The Department in its 2024 Arizona Medically Underserved Areas (AzMUAs) Report designated 83 AzMUAs. In the 2018 AzMUAs Report, the Department had designated 88 AzMUAs. The Department believes that the change in the number of AzMUAs is a result of the decrease in federal Primary Care Areas qualifying for federal Primary Care Health Professional Shortage Area (HPSA) designations. Despite the small decrease in the number of AzMUAs, Arizona continues to have a shortage of primary care providers, ranking 40th in the country at 213.5 primary care providers per 100,000 population (compared to 232.0 per 100,000 nationally). To address these workforce shortages, the Department administers state and federal workforce recruitment and retention programs. One such program, the Arizona State Loan Repayment Program (SLRP), utilizes AzMUAs as eligibility criteria. There are currently 117 providers serving in SLRP at 324 practice sites in underserved areas of Arizona.

The Department's assessment of the actual economic, small business, and consumer impact of the rules remains as mostly consistent with the 2006 EIS. The EIS reported that the Department would be directly affected by the new rules in Article 2 and would incur minimal costs associated with the boundary change request time-frames. The Article 3 rules were not expected to have any impact since the Department had not been asked nor assisted a county, city, town, or health service district to recruit a coordinating medical provider. The Department has assessed that the Article 2 rules did not impact the Department as expected; and rather than incur minimal costs, the Department incurred no costs since the Department has not received a boundary change request. However, the Department did experience the expected impact of the Article 3 rules. The Department has not assisted a county, city or town, or health service district recruit a coordinating medical provider since the last review. Article 3 rules continue to have no impact on the Department.

Political subdivisions, private medical or dental practices, facilities that provide medical or dental services, and consumers and the public were expected to have a minimal indirect benefit from the Article 2 rules for attracting primary care providers seeking loan repayment program funding in a rural area (AzMUAs).

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 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 Department, based on its assessment of the rules provided in paragraph 8, believes that the rules provide a significant benefit to political subdivisions for having rules that determine primary care area (PCA) boundaries and establish criterion, criterion values, and scoring measure that are used to determine whether a PCA is located in an AzMUA. If a political subdivision is located within an AzMUA, the Department, medical or dental practices, facilities that provide medical or dental services, and consumers and the public may receive a significant benefit. The Department benefits by providing AzMUAs designations that attract health service providers, participating in the loan repayment program, to physician or dental practices and facilities providing medical or dental services. Having these additional health service providers may increase medical and dental services for consumers living in those areas. The Department and the public benefit significantly from providing or receiving, respectively, health services that increase the health of Arizonians.

Political subdivisions benefit from having AzMUAs that create employment opportunities to health service providers relocating for employment at medical or dental practices and facilities. The presence of more health professionals in these communities not only generates employment opportunities but also enhances access to care for residents. Consumers benefit from having expanded choices for medical and dental services, potentially experiencing improved quality of care due to the increased availability of providers. Local medical and dental practices, as well as health facilities, will also see financial gains through increased revenue from delivering more services locally. This economic boost is further supported by reducing the need for consumers to travel outside the area for care, keeping healthcare spending within the community. The Department believes the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs. The Department has determined that the benefits of the rules outweigh the costs of the rules.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

The rules in Article 2 and Article 3 govern the designation of Arizona medically underserved areas and coordinating medical providers and are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The 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. 24, Articles 2 and 3 do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department of Health Services proposes no action on these rules at this time.

ARTICLE 1. REPEALED

R9-24-101. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Section repealed by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

R9-24-102. Repealed

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Section repealed by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

R9-24-103. Reserved

R9-24-104. Reserved

R9-24-105. Reserved

R9-24-106. Reserved

R9-24-107. Reserved

R9-24-108. Reserved

R9-24-109. Reserved

R9-24-110. Reserved

R9-24-111. Repealed

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

R9-24-112. Repealed

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

R9-24-113. Repealed

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS

R9-24-201. Definitions

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. "Agency" has the same meaning as in A.R.S. § 41-1001.
2. "Arizona Medical Board" means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
3. "Arizona medically underserved area" means:
   a. A primary care area with the designation described in R9-24-202(1), or
   b. A primary care area with the designation described in R9-24-202(2).
4. "Board of Osteopathic Examiners in Medicine and Surgery" means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
5. "Census tract" means a small, relatively permanent statistical subdivision of a county established by the U.S. Bureau of Census.
6. "Communities of color" means individuals who self identify their race/ethnicity as anything other than Non-Hispanic White.
7. "Disability" means physical, mental, or sensory impairment as reported to the American Community Survey that may include hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and independent living difficulty.
8. "Federal poverty level" means a set of money income thresholds that vary by family size and composition used by the U.S. Census Bureau to determine who is in poverty.
9. "First health care contact" means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual's health issue.
10. "Full-time" means providing primary care services for at least 40 hours between a Sunday at 12:00 midnight and the next Sunday at 12:00 midnight.
11. "Health organization" means:
    a. A person or entity that provides medical services;
    b. A third party payor defined in A.R.S. § 36-125.07(C); or
    c. A trade or professional association described in 501(c)(3), (4), (5), or (6) of the Internal Revenue Code, 26 U.S.C. 501(c), that is exempt from federal income taxes.
12. "Indian reservation" has the same meaning as in A.R.S. § 11-801.
13. "Local planning personnel" means an individual who develops programs related to the delivery of and access to medical services for places or areas:
    a. Under the jurisdiction of an Arizona city or county, or
    b. In an Arizona Indian reservation or less than 50 miles outside the boundaries of an Indian reservation.
14. "Low birthweight" means any neonate weighing less than 2,500 grams at birth or less than 5 pounds 8 ounces.
15. "Medical services" has the same meaning as in A.R.S. § 36-401.
16. "Nonresidential" means not primarily used for living and sleeping.
17. "Person" has the same meaning as in A.R.S. § 41-1001.
18. "Political subdivision" means a county, city, town, district, association, or authority created by state law.
19. "Population" means the number of residents of a place or an area, according to the most recent American Community Survey prepared by the U.S. Census Bureau.
20. "Primary care area" means a geographic region determined by the Department under R9-24-204.
21. "Primary care HPSA" means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 U.S.C. 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.
22. "Primary care index" means the document in which the Department designates primary care areas as medically underserved according to R9-24-203 and Table 2.1.
23. "Primary care physician" means an Arizona licensed practitioner who:
    a. Except for emergencies, is an individual's first health care contact; and
    b. Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.
24. "Primary care services" means health care provided by a primary care physician, including:

a. Illness and injury prevention,
b. Health promotion and education,
c. Identification of individuals at special risk for illness,
d. Early detection of illness,
e. Treatment of illness and injury, and
f. Referral to specialists.

25. "Primary care services utilization pattern" means a distribution of the use of primary care services resulting from the factors listed in R9-24-204(A)(3)(a).
26. "Resident" means an individual who lives and sleeps in a place or an area more than one-half of the time.
27. "Residential" means primarily used for living and sleeping.
28. "Specialist" means an individual who:
    a. Is regulated under:
        i. A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;
        ii. A.R.S. Title 36, Chapter 6, Article 7; or
        iii. A.R.S. Title 36, Chapter 17; and
    b. Meets the education, knowledge, and skill requirements generally recognized in the profession related to a specific service or procedure, patient category, body part or system, or type of disease.
29. "Topography" means the surface configuration of a place or region, including elevations and positions of the physical features.
30. "Travel pattern" means a prevalent flow of vehicles resulting from:
    a. The configuration of streets, and
    b. The location of residential and nonresidential areas.
31. "Value" means a number within a value range.
32. "Value range" means, for a criterion listed in R9-24-203(B) and Table 2.1, a measurement:
    a. Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(8); and
    b. To which Table 2.1 assigns points or 0 points.

Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-201 recodified from R9-24-121 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

R9-24-202. Arizona Medically Underserved Area Designation

The Department shall designate as Arizona medically underserved areas:

1. The primary care areas designated as primary care HPSAs by the U.S. Department of Health and Human Services, and
2. The primary care areas designated as medically underserved by the Department under R9-24-203 and Table 2.1.

Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-202 recodified from R9-24-122 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

R9-24-203. Primary Care Index

A. Every 24 months, the Department shall prepare, according to this Section, a primary care index for designating primary care areas determined under R9-24-204 as Arizona medically underserved areas.
1. For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion in subsection (B).
    a. After calculating the value for each criterion in subsection (B), the Department shall assign points to each value according to Table 2.1.
    b. A primary care area's score is the sum of the points received by the primary care area for each criterion in subsection (B).
2. The Department shall designate as Arizona medically underserved:
    a. The primary care areas that, according to subsection (B) and Table 2.1 score within the top 25 percent on the primary care index or that obtain more than 30 points, whichever results in the designation of more Arizona medically underserved areas; and
    b. The primary care areas with the designation described in R9-24-202(1).

B. For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following:
1. Population-to-primary-care-physician ratio, determined by dividing the population of the primary care area by the number of primary care physicians in the primary care area:
    a. Using primary care physician data from the Arizona Medical Board and the Board of Osteopathic Examiners in Medicine and Surgery,
    b. The Department shall determine an equivalency for a full-time physician where 40 hours equals 1 and 20 hours equal 0.5.
2. Travel distance to the nearest primary care physician, determined by:
    a. Estimating the distance in miles:
        i. From the center of the most densely populated area in the primary care area determined from the most recent American Community Survey prepared by the U.S. Census Bureau; and
        ii. To the nearest primary care physician determined from the data described in subsection (B)(1)(a); and
    b. Using the most direct street route;
3. Percentage of population with calendar year income less than 200% of the Federal poverty level, determined from data in the most recent American Community Survey prepared by the U.S. Census Bureau;
4. Percentage of population who do not have health insurance as determined by the most recent American Community Survey prepared by the U.S. Census Bureau;
5. Low birthweight rate percent of births;
6. Late or no prenatal care percent of births;
7. Infant mortality rate per 1,000 live births;
8. Supplementary criteria score, based on a rate greater than the state wide average for:
    a. Percentage of population age 65 and older;
    b. Percentage of population age 14 and younger;
    c. Percentage of population with a disability;
    d. Percentage of communities of color; and

e. Percentage of population who speaks a language other than English.

C. Every 24 months, according to subsections (A) and (B) and Table 2.1, the Department shall:
1. Withdraw an Arizona medically underserved area designation,
2. Continue an Arizona medically underserved area designation, or
3. Designate a new Arizona medically underserved area.

D. A list of current Arizona medically underserved areas is available in the Department's biennial Arizona Medically Underserved Areas Report at http://www.azdhs.gov/hsd/.

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). R9-24-203 recodified from R9-24-123 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

Table 1. Renumbered

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Table 1 renumbered to Table 2.1 by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

Table 2.1. Primary Care Index Scoring

CRITERIA	VALUE RANGE	POINTS
Population-to-primary care physician ratio	≤ 3000:1	0
	3001:1 to 3500:1	2
	3501:1 to 4000:1	4
	4001:1 to 5000:1	6
	5001:1 to 10,000:1	8
	>10,000:1 or no physician	10
Travel distance to nearest primary care physician	≤ 10.0 miles	0
	10.1-20.0 miles	2
	20.1-30.0 miles	4
	30.1-40.0 miles	6
	40.1-50.0 miles	8
	> 50.0 miles	10
Percentage of population with annual income less than 200% of Federal poverty level	≤ 20.0%	0
	20.1-32.0%	2
	32.1-39.0%	4
	39.1-51.0%	6
	>51.0%	8
Percentage of population who do not have health insurance	≤ 6.2%	0
	6.3-9.6%	2
	9.7-12.2%	4
	12.3-17.2%	6
	>17.2%	8
Low Birthweight Rate (percent of births)	≤ 6.2%	0
	6.3-6.9%	2
	7.0-7.5%	4
	7.6-8.2%	6
	>8.2%	8
Late or No Prenatal Care Rate (percent of births)	≤ 4.6%	0
	4.7-6.2%	2
	6.3-8.2%	4
	8.3-12.4%	6
	>12.4%	8
Infant Mortality Rate (per 1,000 live births)	≤ 3.5	0
	3.6-5.4	2
	5.5-7.0	4
	7.1-10.0	6
	>10.0	8

In addition to the criteria specified in R9-24-203(B) and listed above, if a primary care area satisfies one or more of the following supplementary criteria, add one additional point to the primary care area score for each supplementary criteria satisfied. Supplementary criteria score, based on a rate greater than the state wide average for:
1. Percentage of population age 65 and older;
2. Percentage of population age 14 and younger;
3. Percentage of population with a disability;
4. Percentage of population who are communities of color; and
5. Percentage of population who speaks a language other than English.

Key to Symbols: ≤ represents "less than or equal to" and > represents "more than"

Historical Note
Table 2.1 renumbered from Table 1 and amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

R9-24-204. Primary Care Area Boundaries Determination

A. The Department shall determine the boundaries of primary care areas for the entire state. A primary care area's boundaries shall meet the following requirements:
1. The geographic area within the boundaries corresponds to or is larger than a census tract identified for the geographic area in the most recent American Community Survey prepared by the U.S. Census Bureau;
2. The boundaries are consistent with the population's primary care services utilization patterns; and
3. The primary care utilization patterns are determined by considering:
   a. The geographic area's:
      i. Topography,
      ii. Social and cultural relationships of the people living within the geographic area,
      iii. Political subdivision boundaries, and
      iv. Travel patterns; and
   b. Data about the type, amount, and location of primary care services used by the geographic area's population, obtained from local planning personnel, government officials, health organizations, primary care physicians, and residents of the geographic area.

B. In addition to the requirements for primary care area boundaries in subsection (A), the Department shall consider:
1. Indian reservation boundaries, and
2. Primary care HPSA boundaries.

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). R9-24-204 recodified from R9-24-124 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

R9-24-205. Repealed

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). R9-24-205 recodified from R9-24-125 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). New Section made by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Repealed by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

ARTICLE 3. COORDINATING MEDICAL PROVIDERS

R9-24-301. Definitions
In addition to the definitions in A.R.S. § 36-2351 and 9 A.A.C. 24, Article 2, the following definitions apply in this Article, unless otherwise specified:

1. "CMP" means coordinating medical provider.
2. "Continuing education" means instruction that meets the requirements in:
   a. A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; or
   b. A.A.C. R4-19-511 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense drugs and devices.
3. "Drug prescription services" means providing medication that requires an order by medical personnel authorized by law to order the medication.
4. "Governing authority" has the same meaning as in A.R.S. § 36-401.
5. "Independent decision" means a registered nurse practitioner's action without a physician's order according to A.A.C. R4-19-508 and A.A.C. R4-19-511.
6. "Medical direction" means guidance, advice, or consultation provided by a CMP to a registered nurse practitioner.
7. "Medical personnel" means a medical clinic's physicians, physician assistants, registered nurse practitioners, and nurses.
8. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
9. "Order" means a written directive.
10. "Practice requirements" means the standards for physicians established in:
    a. A.R.S. Title 32, Chapter 13 and 4 A.A.C. 16; or
    b. A.R.S. Title 32, Chapter 17 and 4 A.A.C. 22.
11. "Referral source" means a person who sends an individual to a third person for medical services.
12. "Registered nurse practitioner" means an individual licensed under A.R.S. Title 32, Chapter 15.
13. "Social services" means assistance, other than medical services, provided to maintain or improve an individual's physical, mental, and social participation capabilities.
14. "Supervision" has the same meaning as in A.R.S. § 32-2501.
15. "Support services" means drug prescription services, social services, and provision of durable medical equipment.
16. "Work schedule coverage" means a medical clinic's system for ensuring that a sufficient number of medical personnel are present at the medical clinic.
17. "Written protocol" means an agreement that identifies and is signed by a CMP and a registered nurse practitioner or a physician assistant.

Historical Note
Adopted effective July 27, 1978 (Supp. 78-4). R9-24-301 recodified from R9-24-131 (Supp. 95-2). Former Section R9-24-301 renumbered to R9-24-302; new Section R9-24-301 adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

R9-24-302. CMP Functions

A. A CMP shall:

1. Participate in planning for the delivery of medical services and support services within the Arizona medically underserved area that includes ways to increase access to medical services and support services for the Arizona medically underserved area's residents;
2. Develop written protocols that:
   a. Describe the manner and frequency that a registered nurse practitioner or a physician assistant at a medical clinic will communicate with the CMP, in addition to the face-to-face meeting required in subsection (A)(5);
   b. Specify the criteria used by a registered nurse practitioner at the medical clinic in making an independent decision to refer an individual to a physician; and
   c. Specify procedures to be followed by a physician assistant at the medical clinic when the CMP's supervision of the physician assistant is by a means other than physical presence;
3. Approve or disapprove the selection of registered nurse practitioners and physician assistants who will work at the medical clinic;
4. Provide:
   a. Medical direction to the registered nurse practitioners at the medical clinic, and analysis
   b. Supervision to the physician assistants at the medical clinic;
5. At least weekly, conduct a face-to-face meeting with each registered nurse practitioner and each physician assistant at the medical clinic to evaluate the medical services provided by the registered nurse practitioner or physician assistant;
6. For continuing education of a medical clinic's medical personnel:
   a. Recommend specific areas of instruction, including instruction in referral sources; and
   b. Develop a written plan for work schedule coverage to accommodate continuing education; and
7. At least annually, meet with the medical clinic's governing authority to evaluate the medical clinic's program and the medical care provided by the medical clinic's medical personnel.

B. The requirements in subsection (A) do not replace the practice requirements applicable to a CMP.

Historical Note
New Section renumbered from R9-24-301 and amended by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1991, with an immediate effective date of September 4, 2020 (Supp. 20-3).

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.

36-2352. Designation of medically-underserved areas

A. The department shall designate areas of medical need in this state as medically-underserved if either:

1. The area is designated as a health professional shortage area as defined in 42 Code of Federal Regulations part 5.

2. The area is designated as medically underserved by the department of health services by using an index that measures the following indicators:

(a) The availability of services based on a population to primary care provider ratio.

(b) The area's geographic accessibility to health care services.

(c) The percentage of the area's population that is at or below a designated federal poverty level.

(d) The health needs of the area as determined by factors which may include the incidence of infant mortality, low weight births and inadequate prenatal care.

(e) Other factors indicative of medically underserved areas which may include unemployment and the presence of farm workers, minorities and the elderly.

B. The department of health services shall submit a report to the president of the senate and the speaker of the house of representatives beginning October 1, 1996 and every two years thereafter that reevaluates the criteria, effectiveness and recommendations for changes, if necessary, to the index. The report shall also include a summary of the communities designated as medically underserved and a listing of the programs they were able to utilize based on the medically underserved designation.

36-2353. Medically-underserved areas; selection of coordinating medical providers

A. For each area designated as medically-underserved, the department may assist counties, incorporated cities and towns or health service districts to recruit a

coordinating medical provider. Selection of a coordinating medical provider shall be based upon such provider's proximity to the medically-underserved area and the ability and willingness of such provider to fulfill the requirements established pursuant to section 36-2354.

B. If no coordinating medical provider is located in or near the medically-underserved area, the university of Arizona may agree to serve as the coordinating medical provider for the area.

36-2354. Coordinating medical provider; duties

A coordinating medical provider for a medically-underserved area shall perform certain functions as determined by the department in order to ensure the provision of adequate medical care by the medical clinic. These functions may include:

1. Diagnostic services through a communications system between the clinic and the coordinating medical provider.

2. Overall direction of medical care offered at the clinic or facility, including a periodic evaluation of the quality of such care.

3. Drug prescription services.

4. Communication services to facilitate patient treatment during emergency transit to the clinic or a hospital.

E-7.

BOARD OF BEHAVIORAL HEALTH EXAMINERS
Title 4, Chapter 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **ARIZONA BOARD OF BEHAVIORAL HEALTH EXAMINERS**
Title 4, Chapter 6

Summary

This Five-Year Review Report (5YRR) from the Arizona Board of Behavioral Health Examiners (Board) covers fifty-six (56) rules and one (1) table in Title 4, Chapter 6, related to the Board of Behavioral Health Examiners. Specifically, these rules cover the following articles:

- **Article 1: Definitions;**
- **Article 2: General Provisions;**
- **Article 3: Licensure**
- **Article 4: Social Work;**
- **Article 5: Counseling;**
- **Article 6: Marriage and Family Therapy;**
- **Article 7: Substance Abuse Counseling;**
- **Article 8: License Renewal and Continuing Education;**
- **Article 9: Appeal of Licensure or License Renewal Ineligibility;**
- **Article 10: Disciplinary Process; and**
- **Article 11: Standards of Practice.**

In the Board's previous 5 YRR, the Board indicated that four (4) rules needed to be amended. The Board has indicated that these four rules were amended by final rulemaking with an effective date of January 3, 2021. This rulemaking amended a total of 21 rules and one table.

Proposed Action

The Board has indicated that the legislature has amended the Board's statutes multiple times since the last 5 YRR and rulemaking. The Board previously tried to address some of these statutory changes in 2023 but as a result of public comment, the Board tabled the rulemaking to further consider the comments. The Board intends on restarting the 2023 rulemaking and completing the additional items in this report with the goal of submitting a Notice of Final Rulemaking to the Council by June 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 Board completed one rulemaking since the Council approved the Board's last 5YRR. In the rulemaking, the Board amended 21 rules with the intent to clarify rules and reduce regulatory burdens, the amendments included eliminating the $100 fee for issuing a license and providing options to non-independent level licensees for clinical supervision. Stakeholders include the Board, applicants for licensure, and licensees. There are currently 18,417 licensed behavioral health professionals in Arizona.

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

The Board determined the benefits of the rules, protecting public health and safety, outweigh the costs and regulatory burdens imposed on those subject to the rules. Many costs and regulatory burdens result from statute rather than the rule.

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.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- R4-6-215
    - The Board states that a fee is needed for registration for out of state providers of telehealth and needs to be added to the rule. This fee would be permitted by A.R.S. § 36-3606(A)(3) and is a result of 2021 legislation.
- R4-6-101(23)
    - The Board has indicated that the definition of "direct client contact" does not include telehealth as found in A.R.S. § 32-3251(3).
- R4-6-403(A)(4)), R4-6-503(A)(4), R4-6-603(A)(3)), and R4-6-705(A)(3));
    - The Board has stated that these four rules contain references to evidence of indirect client hours for licensing requirements, these references need to be removed. This requirement was removed as a result of 2021 legislation, Laws 2021, Chapter 62.
- R4-6-215, R4-6-304, and Table 1
    - The Board has indicated that the privilege to practice under the Counseling Compact needs to be added for professional counselors. This is a result of 2024 legislation which resulted in the passage of A.R.S. § 32-3306. The Board has also indicated that these 2 rules and one table need to be amended to allow multistate licensing under the Social Work Compact needs to be added. The Social Work Compact is the result of 2024 legislation, which added A.R.S. § 32-3295.
- Article 7
    - The Department has indicated that "substance abuse counseling" changed to "addiction counseling" as a result of 2024 legislation that amended multiple statutes as part of Laws 2024, Chapter 169.
- R4-6-215, R4-6-304, R4-6-306, and Table 1
    - These rules need to be amended to reflect universal licensing recognition under A.R.S. § 32-4302.
- R4-6-211 and R-4-2617
    - The Department has indicated that these rules need to be amended to align with requirements of the Commission on Accreditation for Marriage and Family Therapy Education.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the rules are effective in achieving their objectives.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the rules are generally enforced as written with the exception of R4-6-101(23), R4-6-211, R4-6-215, Table 1, R4-6-403(A)(4)), R4-6-503(A)(4), R4-6-603(A)(3)), R4-6-705(A)(3)), and Article 7. These rules are not enforced because they are

not consistent with statute, as identified in item 6 of this memo. The Department indicates that they are following the statutes where there are conflicts between statute and rule.

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.

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?

Yes. The Board states that it issues licenses pursuant to its statutes to individuals qualifying for licensure. The type of license that the Board issues falls under an exception to the general permit requirement in A.R.S. § 41-1037 because the licensing requirements come from specific statutes.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Board of Behavioral Health Examiners (Board) covers fifty-six (56) rules and one (1) table in Title 4, Chapter 6, related to the Board of Behavioral Health Examiners. The Board has indicated that recent statutory changes have resulted in the rules being inconsistent with statute and not being enforced as written. The Board is proposing to amend the rules to correct these issues and anticipate submitting a Notice of Final Rulemaking to the Council by June 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 6. Board of Behavioral Health Examiners
Submitted for December 3, 2024

INTRODUCTION

The Arizona Board of Behavioral Health Examiners (Board), which was established in 1988, protects public health and safety by regulating the practice of behavioral health professionals. This includes licensing counselors, marriage and family therapists, social workers, and addiction counselors, investigating allegations of unprofessional conduct, and ordering appropriate discipline. The Board is assisted in its work by four credentialing committees, one for each of the behavioral health disciplines.

Since the Board's last 5YRR was approved by the Council on March 3, 2020, the legislature has amended the Board's rules multiple times:

- Under Laws 2021, Chapter 320, the legislature amended A.R.S. § 32-3251 to provided that direct client contact includes providing therapeutic or clinical care by telehealth. The legislation also added A.R.S. § 36-3606 regarding registration of out-of-state providers of telehealth services.
- Under Laws 2021, Chapter 62, the legislature amended A.R.S. §§ 32-3293 (social work), 32-3301 (counseling), 32-3311 (marriage and family therapy), and 32-3321 (addiction counseling) to remove the requirement that an applicant provide evidence of indirect client hours obtained during training. The applicant must provide evidence of direct client hours and clinical supervision.
- Under Laws 2024, Chapter 77, the legislature enacted A.R.S. § 32-3306, which establishes a compact to facilitate interstate practice of licensed professional counselors.
- Under Laws 2024, Chapter 169, the legislature changed the term "substance abuse counseling" to "addiction counseling" and expanded the scope to include compulsive dependence on a behavior and activities known as process addictions.

- Under Laws 2024, Chapter 37, the legislature amended A.R.S. § 32-2372 to require the Board to waive a renewal fee for an associate level license if the licensee has an application for independent licensure pending when a renewal application is submitted.
- Under Laws 2024, Chapter 227, the legislature enacted the Social Work Licensure Compact.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-3253

1. Specific statute authorizing the rule:

R4-6-101. A.R.S. § 32-3253

R4-6-201. A.R.S. § 32-3253

R4-6-203. A.R.S. § 32-3262

R4-6-205. A.R.S. § 32-3276

R4-6-206. A.R.S. § 32-3253

R4-6-207. A.R.S. §§ 32-3253 and 32-3282

R4-6-208. A.R.S. §§ 32-3251(16) and 32-3275

R4-6-209. A.R.S. §§ 32-3253, 32-3277, and 41-1073

R4-6-210. A.R.S. §§ 32-3253, 32-3279, 32-3291, 32- 3292, 32-3303, 32-3313 and 32-3321

R4-6-211. A.R.S. §§ 32-3253, 32-3279, 32-3291, 32- 3292, 32-3303, 32-3313 and 32-3321

R4-6-212. A.R.S. §§ 32-3253, 32-3293, 32-3301, 32-3311 and 32-3321

R4-6-212.01. A.R.S. §§ 32-3253, 32-3293, 32-3301, 32-3311 and 32-3321

R4-6-213. A.R.S. § 32-3253

R4-6-214. A.R.S. § 32-3253

R4-6-215. A.R.S. §§ 32-3253 and 32-3272

R4-6-216. A.R.S. §§ 32-3253, 32-3291, 32-3292, 32- 3293, 32-3301, 32-3311 and 32-3321

R4-6-301. A.R.S. §§ 32-3253, 32-3275, 32-3280, 41- 1080(A), 25-320(P), and 25-502(K)

R4-6-302. A.R.S. §§ 41-1073 and 32-3253(A)(3)

Table 1. A.R.S. §§ 41-1073 and 32-3253(A)(3)

R4-6-304. A.R.S. §§ 32-3274 and 32-4302

R4-6-305. A.R.S. § 32-3278

R4-6-306. A.R.S. § 32-3279

R4-6-307. A.R.S. § 32-3253

R4-6-401. A.R.S. §§ 32-3291, 32-3292, and 32-3293

R4-6-402. A.R.S. §§ 32-3291, 32-3292, and 32-3293

R4-6-403. A.R.S. § 32-3293

R4-6-404. A.R.S. § 32-3293

R4-6-501. A.R.S. §§ 32-3301 and 32-3303

R4-6-502. A.R.S. §§ 32-3301 and 32-3303

R4-6-503. A.R.S. § 32-3301

R4-6-504. A.R.S. § 32-3301

R4-6-505. A.R.S. §§ 32-3301 and 32-3303

R4-6-601. A.R.S. §§ 32-3311 and 32-3313

R4-6-602. A.R.S. §§ 32-3311 and 32-3313

R4-6-603. A.R.S. § 32-3311

R4-6-604. A.R.S. § 32-3311

R4-6-605. A.R.S. §§ 32-3311 and 32-3313

R4-6-701. A.R.S. § 32-3321

R4-6-702. A.R.S. § 32-3321

R4-6-703. A.R.S. § 32-3321

R4-6-704. A.R.S. § 32-3321

R4-6-705. A.R.S. § 32-3321

R4-6-706. A.R.S. § 32-3321

R4-6-707. A.R.S. § 32-3321

R4-6-801. A.R.S. §§ 32-3273 and 32-4301

R4-6-802. A.R.S. § 32-3273

R4-6-803. A.R.S. § 32-3273

R4-6-901. A.R.S. §§ 32-3253, 32-3275, and 41-1092

R4-6-902. A.R.S. §§ 32-3253, 32-3275, and 41-1092

R4-6-1001. A.R.S. §§ 32-3253, 32-3281 and 32-3282

R4-6-1002. A.R.S. §§ 32-3253, 32-3281 and 32-3282

R4-6-1101. A.R.S. § 32-3253

R4-6-1102. A.R.S. § 32-3253

R4-6-1103. A.R.S. §§ 32-3253, 12-2293, and 12-2297

R4-6-1104. A.R.S. § 32-3253
R4-6-1105. A.R.S. §§ 32-3253 and 32-3283
R4-6-1106. A.R.S. § 32-3253

2. Objective of the rules:

R4-6-101. Definitions: The objective of this rule is to enhance understandability of the rules by defining terms used in a manner not explained adequately by a dictionary definition.

R4-6-201. Board Meetings; Elections: The objective of this rule is to establish minimum requirements for Board operation.

R4-6-203. Academic Review Committee Meetings: Elections: The objective of this rule is to establish minimum requirements for operation of the Academic Review Committees.

R4-6-205. Change of Contact Information: The objective of this rule is to facilitate communication between the Board and a licensee or applicant by requiring the licensee or applicant provide the Board with current contact information.

R4-6-206. Change of Name: The objective of this rule is to assist the Board in maintaining accurate records by requiring a licensee or applicant inform the Board when the licensee's or applicant's name changes.

R4-6-207. Confidential Records: The objective of this rule is to specify which Board records are confidential and not available for public review.

R4-6-208. Conviction of a Felony or Prior Disciplinary Action: The objective of this rule is to inform a licensee or applicant of the factors the Board considers when determining whether a felony conviction or prior disciplinary action will result in disciplinary sanctions.

R4-6-209. Deadline Extensions: The objective of this rule is to inform a licensee or applicant which deadlines may be extended, which may not be extended, and how to obtain an extension.

R4-6-210. Practice Limitations: The objective of this rule is to indicate which licensees are required to work under direct supervision only.

R4-6-211. Direct Supervision; Supervised Work Experience: General: The objective of this rule is to provide standards for the direct supervision required of a supervised work experience.

R4-6-212. Clinical Supervision Requirements: The objective of this rule is to establish minimum standards for clinical supervision acceptable for licensure.

R4-6-212.01. Exemptions to the Clinical Supervision Requirements: The objective of this rule is to specify exemptions to the minimum standards for clinical supervision.

R4-6-213. Registry of Clinical Supervisors: The objective of this rule is to specify the requirements with which a licensee must comply to be included on the Board's registry of clinical supervisors.

R4-6-214. Clinical Supervisor Educational Requirements: The objective of this rule is to maintain clinical supervision standards by ensuring licensees included on the Board's registry of clinical supervisors remain qualified.

R4-6-215. Fees and Charges: The objective of this rule is to provide notice of the fees and charges collected by the Board for its licensing and service responsibilities. The rule also specifies acceptable methods of payment.

R4-6-216. Foreign Equivalency Determination: The objective of this rule is to specify the manner in which the Board determines whether a degree obtained in a foreign country is substantially equivalent to one obtained in this country.

R4-6-301. Application for a License by Examination: The objective of this rule is to specify the information and documents required from an applicant for licensure by examination.

R4-6-302. Licensing Time Frames: The objective of this rule is to inform an applicant or licensee of the time and manner in which the Board acts on an application.

Table 1. Time Frames (in Days): The objective of this table is to inform an applicant or licensee of the time in which the Board acts on an application.

R4-6-304. Application for a License by Endorsement: The objective of this rule is to specify the information and documents required from an applicant for licensure by endorsement.

R4-6-305. Inactive Status: The objective of this rule is to specify the procedure for placing a license on inactive status, the consequences of a license being inactive, and the procedure for reactivating a license.

R4-6-306. Application for a Temporary License: The objective of this rule is to specify who is eligible for a temporary license, the procedure for application, and the consequences of having a temporary license.

R4-6-307. Approval of an Educational Program: The objective of this rule is to inform representatives of regionally accredited colleges and universities of the procedure for obtaining the Board's approval of an educational program in behavioral health.

R4-6-401. Curriculum: The objective of this rule is to specify the standard for the curriculum of a degree in social work, which is required for licensure.

R4-6-402. Examination: The objective of this rule is to specify the examination required of an applicant for social work licensure and time restrictions for passing the required examination.

R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure: The objective of this rule is to specify the supervised work experience requirements for an applicant seeking licensure as a clinical social worker.

R4-6-404. Clinical Supervision for Clinical Social Worker Licensure: The objective of this rule is to specify that some of the supervision of an applicant seeking licensure as a clinical social worker must be clinical supervision and specify requirements for the clinical supervision hours.

R4-6-501. Curriculum: The objective of this rule is to specify the standard for the curriculum, including a supervised practicum, of a master's or higher degree in counseling, which is required for licensure.

R4-6-502. Examination: The objective of this rule is to specify the examination required of an applicant for counseling licensure and time restrictions for passing the required examination.

R4-6-503. Supervised Work Experience for Professional Counselor Licensure: The objective of this rule is to specify the supervised work experience requirements for an applicant seeking licensure as a professional counselor.

R4-6-504. Clinical Supervision for Professional Counselor Licensure: The objective of this rule is to specify that some of the supervision of an applicant seeking licensure as a professional counselor must be clinical supervision and specify requirements for the clinical supervision hours.

R4-6-505. Post-degree Programs: The objective of this rule is to specify the amount of course work an applicant for associate or professional counselor licensure may take to correct curriculum deficiencies.

R4-6-601. Curriculum: The objective of this rule is to specify the standard for the curriculum, including a supervised practicum, of a master's or higher degree in marriage and family therapy, which is required for licensure.

R4-6-602. Examination: The objective of this rule is to specify the examination required of an applicant for marriage and family therapy licensure and time restrictions for passing the required examination.

R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure: The objective of this rule is to specify the supervised work experience requirements for an applicant seeking licensure as a marriage and family therapist.

R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure: The objective of this rule is to specify that some of the supervision of an applicant seeking licensure as a marriage and family therapist must be clinical supervision and specify requirements for the clinical supervision hours.

R4-6-605. Post-degree Programs: The objective of this rule is to specify the amount of course work an applicant for licensure as a marriage and family therapist may take to correct curriculum deficiencies.

R4-6-701. Licensed Substance Abuse Technician Curriculum: The objective of this rule is to specify the curriculum requirements for licensure as a substance abuse technician.

R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum: The objective of this rule is to establish the curriculum requirements for licensure as an associate substance abuse counselor.

R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum: The objective of this rule is to establish the curriculum requirements for licensure as an independent substance abuse counselor.

R4-6-704. Examination: The objective of this rule is to establish the examination requirements for substance abuse licensure and specify the examinations acceptable to the Board.

R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure: The objective of this rule is to specify the supervised work experience requirements for licensure as a substance abuse counselor.

R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure: The objective of this rule is to specify the number of hours of supervised work experience that must involve clinical supervision by a qualified supervisor.

R4-6-707. Post-degree Programs: The objective of this rule is to specify the standards for course work an applicant for licensure as a substance abuse counselor may take to correct curriculum deficiencies.

R4-6-801. Renewal of Licensure: The objective of this rule is to specify the requirements for biennial license renewal.

R4-6-802. Continuing Education: The objective of this rule is to specify limitations regarding acceptable hours of continuing education.

R4-6-803. Continuing Education Documentation: The objective of this rule is to specify acceptable documentation of continuing education and the time the documentation needs to be maintained.

R4-6-901. Appeal Process for Licensure Ineligibility: The objective of this rule is to specify the appeal procedure an applicant may use when an ARC finds the applicant is ineligible for licensure.

R4-6-902. Appeal Process for Licensure Renewal Ineligibility: The objective of this rule is to specify the appeal procedure an applicant may use when an ARC finds the applicant is ineligible for license renewal.

R4-6-1001. Disciplinary Process: The objective of this rule is to specify the manner in which the Board handles complaints against a licensee including determining whether disciplinary action is appropriate.

R4-6-1002. Review or Rehearing of a Board Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R4-6-1101. Consent for Treatment: The objective of this rule is to specify that informed consent is required before any treatment is provided, the elements of informed consent, and the manner in which informed consent is documented.

R4-6-1102. Treatment Plan: The objective of this rule is to specify the requirements for a treatment plan, including review and revision of the treatment plan.

R4-6-1103. Client Record: The objective of this rule is to specify the standards for maintaining client records and the manner in which client records are to be used and confidentiality ensured.

R4-6-1104. Financial and Billing Records: The objective of this rule is to ensure a client is aware of a licensee's billing practices before a therapeutic relationship is entered and to require billing records be maintained separate from client records.

R4-6-1105. Confidentiality: The objective of this rule is to protect client confidentiality by establishing procedures for release of client information.

R4-6-1106. Telepractice: The objective of this rule is to establish standards for providing behavioral health services by telepractice.

3. Are the rules effective in achieving their objectives? Yes

The Board determined the rules are effective in achieving their objectives because the Board is able to use the rules to fulfill its statutory responsibility to protect public health and safety by licensing and regulating behavioral health professionals.

4. Are the rules consistent with other rules and statutes? Mostly yes

The Board's rules are inconsistent with the multiple changes the legislature made to the Board's statutes in the last three years. The rules are inconsistent as follows:

- A fee is needed for registration of an out-of-state provider of telehealth (See R4-6-215—the Board intends to add the fee as subsection (B)). Additionally, this registration needs to be addressed in the time frame table (See Table 1—the application for registration will be added);
- The definition of "direct client contact" needs to be updated to include telehealth (See R4-6-101(23)—the definition will be updated consistent with A.R.S. § 32-3251);
- For all four professions, evidence of indirect client hours needs to be removed from the licensing requirements (See R4-6-403(A)(4)), R4-6-503(A)(4), R4-6-603(A)(3)), and R4-6-705(A)(3));
- The privilege to practice under the Counseling Compact needs to be added for professional counselors (See R4-6-215, R4-6-304, and Table 1—the privilege to practice will be added to these Sections)
- The multistate license under the Social Work Compact needs to be added for social workers (See R4-6-215, Table 1, and R4-6-304—the multistate license will be added to these Sections); and
- The term "substance abuse counselor" needs to be changed to "addiction counselor." This statutory change ricochets throughout the rules but mostly affects the rules in Article 7.

Additionally, the Board needs to address licensure by universal recognition as specified under A.R.S. § 32-4302 (See R4-6-215, R4-6-304, R4-6-306, and Table 1—licensure by

universal recognition will be added to each of these Sections) and to align provisions regarding supervised private practice with requirements of the Commission on Accreditation for Marriage and Family Therapy Education (See R4-6-211 and R4-6-217—supervised private practice will be removed from R4-6-211 and added in a new Section).

5. Are the rules enforced as written? Mostly yes

The Board enforces the rules in a manner consistent with statute. The rules that are inconsistent with statute are identified in item 4 (R4-6-101(23), R4-6-211, R4-6-215, Table 1, R4-6-403(A)(4)), R4-6-503(A)(4), R4-6-603(A)(3)), R4-6-705(A)(3)), and Article 7. In each case, the rules are enforced in a manner consistent with statute.

6. Are the rules clear, concise, and understandable? Yes

7. Has the agency received written criticisms of the rules within the last five years? No

The Board submitted a rule package for the Council's approval at its July 5, 2023, meeting. However, in response to public comments at the meeting, the Council tabled the rule package rather than approve it. In response, the Board terminated the rule package (See 29 A.A.R. 1895, August 25, 2023).

8. Economic, small business, and consumer impact comparison:

The Board completed one rulemaking since the Council approved the Board's previous 5YRR. In the rulemaking, the Board made clarifying amendments to 21 rules and reduced regulatory burdens, including eliminating the $100 fee for issuing a license and providing options to non-independent level licensees for clinical supervision.

2020 rulemaking: 26 A.A.R. 2881, November 13, 2020

The economic, small business, and consumer impact statement prepared with this rulemaking was available for review. In the EIS, the Board estimated the fee elimination would impact approximately 2,000 applicants each year and that approximately 2,500 non-independent level licensees would benefit from expanded access to a qualified clinical supervisor.

There are currently 18,417 licensed behavioral health professionals in Arizona. During the last fiscal year, the Board issued 3,434 first-time licenses. This means the Board did not collect the $343,400 it would have collected if the license issuance fee had remained in place and under A.R.S. § 32-3254, did not deposit $34,340 into the state's general fund. During the last fiscal year, 6,637 non-independent level licensees benefited from expanded access to a qualified clinical supervisor. The Board benefited from having rules that do not impose unnecessary regulatory burdens.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR: Yes
In the 5YRR approved by the Council on March 3, 2020, the Board indicated it intended to complete the rulemaking referenced in item 8.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:
The Board determined the benefits of the rules, protecting public health and safety, outweigh the costs and regulatory burdens imposed on those subject to the rules. Many of the costs and regulatory burdens result from statute rather than rule. Indeed, the word "rule" appears 236 times in the Board's statutes, specifying the many topics on which the legislature requires the Board to make rules. Among the costs and regulatory burdens are:
    - All applicants must submit an application for licensure and pay the applicable fee;
    - Applicants must obtain specified education, including supervised work experience, pass a licensing examination, and pass a criminal background check;
    - Licensees must renew the license biennially and pay a renewal fee;
    - Licensees must obtain continuing education;
    - Licensees must work within the scope of the licensed practice level; and
    - Licensees must adhere to community standards of practice including maintaining client records and financial records and protecting confidentiality.

A Performance Audit and Sunset Review conducted in September 2024 by Walker and Armstrong, on behalf of the Arizona Auditor General, concluded The Board had made the rules required by statute. The report indicated it might be possible for the Board to reduce some of its fees. The Board does not receive an appropriation from the general fund. Rather, it is required to establish fees that cover its costs. In 2022 and 2023, the Board's fees generated an increasing fund balance. However, in 2024, the legislature transferred $4,200,000 to the general fund so the Board's fund balance decreased significantly.

As with fees, any rule requirement that involves discretion on the part of the Board, could be made less burdensome. For example:

- Fewer hours of continuing education could be required;
- Fewer years of work history could be required;
- The standard for what constitutes a change to an approved educational program could be made more flexible;
- The standard for documenting informed consent could be more flexible; and
- The point by which a treatment plan must be developed could be more flexible.

However, the Board believes these standards are the minimum necessary to enable the Board to fulfill its statutory responsibility to protect public health and safety. Any regulatory requirement is burdensome but the Board is confident no rule requirement is unduly burdensome.

12. Are the rules more stringent than corresponding federal laws? No

No federal law is applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All of the Board's rules were made after July 29, 2010. However, A.R.S. § 41-1037 is not applicable because the Board does not issue general permits. The Board is required by statute to assess the qualifications of applicants and issue licenses only to those who meet the statutory standards (See A.R.S. §§ 32-3275, 32-3291, 32-3292, 32-3293, 32-3301, 32-3303, 32-3311, and 32-3321).

14. Proposed course of action:

The Board received the approval required under A.R.S. § 41-1039(A) to do a rulemaking that will complete the rulemaking terminated in 2023 and address the items identified in this report. The Board expects to submit the rulemaking to the Council by June 2025.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

Supp. 20-4

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020 (Supp. 20-4).

Questions about these rules? Contact:

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

Editor's Note: Former 4 A.A.C. 6 repealed; new 4 A.A.C. 6 made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004. Under Laws 2003, Ch. 65, the rules for the Board of Behavioral Health Examiners were repealed and replaced with new rules, and the Board was exempt from the Administrative Procedure Act for one year. The former rules and all Historical Notes are on file in the Office of the Secretary of State (Supp. 04-2).

ARTICLE 1. DEFINITIONS

ARTICLE 2. GENERAL PROVISIONS

ARTICLE 3. LICENSURE

ARTICLE 4. SOCIAL WORK

ARTICLE 5. COUNSELING

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

ARTICLE 7. SUBSTANCE ABUSE COUNSELING

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

ARTICLE 9. APPEAL OF LICENSURE OR LICENSURE RENEWAL INELIGIBILITY

ARTICLE 10. DISCIPLINARY PROCESS

ARTICLE 11. STANDARDS OF PRACTICE

ARTICLE 1. DEFINITIONS

R4-6-101. Definitions

A. The definitions at A.R.S. § 32-3251 apply to this Chapter. Additionally, the following definitions apply to this Chapter, unless otherwise specified:

1. "Applicant" means:
   a. An individual requesting a license by examination, temporary license, or a license by endorsement by submitting a completed application packet to the Board; or
   b. A regionally accredited college or university seeking Board approval of an educational program under R4-6-307.
2. "Application packet" means the required documents, forms, fees, and additional information required by the Board of an applicant.
3. "ARC" means an academic review committee established by the Board under A.R.S. § 32-3261(A).
4. "Assessment" means the collection and analysis of information to determine an individual's behavioral health treatment needs.
5. "ASWB" means the Association of Social Work Boards.
6. "Behavioral health entity" means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.
7. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
8. "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.
9. "Client record" means collected documentation of the behavioral health services provided to and information gathered regarding a client.
10. "Clinical social work" means social work involving clinical assessment, diagnosis, and treatment of individuals, couples, families, and groups.
11. "Clinical supervision" means direction or oversight provided either face to face or by videoconference or telephone by an individual qualified to evaluate, guide, and direct all behavioral health services provided by a licensee to assist the licensee to develop and improve the necessary knowledge, skills, techniques, and abilities to allow the licensee to engage in the practice of behavioral health ethically, safely, and competently.
12. "Clinical supervisor" means an individual who provides clinical supervision.
13. "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.
14. "Clock hour" means 60 minutes of instruction, not including breaks or meals.
15. "Contemporaneous" means documentation is made within 10 business days.
16. "Continuing education" means training that provides an understanding of current developments, skills, procedures, or treatments related to the practice of behavioral health, as determined by the Board.
17. "Co-occurring disorder" means a combination of substance use disorder or addiction and a mental or personality disorder.
18. "CORE" means the Council on Rehabilitation Education.
19. "Counseling related coursework" means education that prepares an individual to provide behavioral health services, as determined by the ARC.
20. "CSWE" means Council on Social Work Education.
21. "Date of service" means the postmark date applied by the U.S. Postal Service to materials addressed to an

applicant or licensee at the address the applicant or licensee last placed on file in writing with the Board.

22. "Day" means calendar day.
23. *"Direct client contact" means the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients.* A.R.S. § 32-3251.
24. "Direct supervision" means responsibility and oversight for all services provided by a supervisee as prescribed in R4-6-211.
25. "Disciplinary action" means any action taken by the Board against a licensee, based on a finding that the licensee engaged in unprofessional conduct, including refusing to renew a license and suspending or revoking a license.
26. "Documentation" means written or electronic supportive evidence.
27. "Educational program" means a degree program in counseling, marriage and family therapy, social work, or substance use or addiction counseling that is:
    a. Offered by a regionally accredited college or university, and
    b. Not accredited by an organization or entity recognized by the Board.
28. "Electronic signature" means an electronic sound, symbol, or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
29. "Family member" means a parent, sibling, half-sibling, child, cousin, aunt, uncle, niece, nephew, grandparent, grandchild, and present and former spouse, in-law, stepchild, stepparent, foster parent, or significant other.
30. "Gross negligence" means careless or reckless disregard of established standards of practice or repeated failure to exercise the care that a reasonable practitioner would exercise within the scope of professional practice.
31. "Inactive status" means the Board has granted a licensee the right to suspend behavioral health practice temporarily by postponing license renewal for a maximum of 48 months.
32. "Independent practice" means engaging in the practice of marriage and family therapy, professional counseling, social work, or substance abuse counseling without direct supervision.
33. *"Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.* A.R.S. § 32-3251.
34. "Individual clinical supervision" means clinical supervision provided by a clinical supervisor to one supervisee.
35. "Informed consent for treatment" means a written document authorizing treatment of a client that:
    a. Contains the requirements of R4-6-1101;
    b. Is dated and signed by the client or the client's legal representative, and
    c. Beginning on July 1, 2006, is dated and signed by an authorized representative of the behavioral health entity.
36. "Legal representative" means an individual authorized by law to act on a client's behalf.
37. "License" means written authorization issued by the Board that allows an individual to engage in the practice of behavioral health in Arizona.
38. "License period" means the two years between the dates on which the Board issues a license and the license expires.
39. "NASAC" means the National Addiction Studies Accreditation Commission.
40. *"Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this Chapter.* A.R.S. § 32-3251.
41. *"Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:*
    a. Assessment, appraisal and diagnosis.
    b. The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.
42. *"Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:*
    a. Facilitate human development and adjustment throughout the human life span.
    b. Assess and facilitate career development.
    c. Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive,

affective or behavioral.

d. Manage symptoms of mental illness.

e. Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.

43. *"Practice of social work" means the professional application of social work theories, principles, methods and techniques to:*
    a. Treat mental, behavioral and emotional disorders.
    b. Assist individuals, families groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.
    c. Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.
44. *"Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:*
    a. Assessment, appraisal, and diagnosis.
    b. The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.
45. "Progress note" means contemporaneous documentation of a behavioral health service provided to an individual that is dated and signed or electronically acknowledged by the licensee.
46. *"Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health."* A.R.S. § 32-3251.
47. "Quorum" means a majority of the members of the Board or an ARC. Vacant positions do not reduce the quorum requirement.
48. "Regionally accredited college or university" means the institution has been approved by an entity recognized by the Council for Higher Education Accreditation as a regional accrediting organization.
49. "Significant other" means an individual whose participation a client considers to be essential to the effective provision of behavioral health services to the client.
50. "Supervised work experience" means practicing clinical social work, marriage and family therapy, professional counseling, or substance abuse counseling for remuneration or on a voluntary basis under direct supervision and while receiving clinical supervision as prescribed in R4-6-212 and Articles 4 through 7.
51. *"Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between a behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to A.R.S. § 36-3602.* A.R.S. § 32-3251.
52. "Treatment" means the application by a licensee of one or more therapeutic practice methods to improve, eliminate, or manage a client's behavioral health issue.
53. "Treatment goal" means the desired result or outcome of treatment.
54. "Treatment method" means the specific approach a licensee used to achieve a treatment goal.
55. "Treatment plan" means a description of the specific behavioral health services that a licensee will provide to a client that is documented in the client record, and meets the requirements found in R4-6-1102.

B. For the purposes of this Chapter, notifications or communications required to be "written" or "in writing" may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and may not be transmitted or received orally. Documents requiring a signature may include a written signature or electronic signature as defined in subsection (A)(28).

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Formatting error with "theories" not in italics in subsection 44 corrected at the request of the Board (Supp. 17-2). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

ARTICLE 2. GENERAL PROVISIONS

R4-6-201. Board Meetings; Elections

A. The Board:
1. Shall meet at least annually in June and elect the officers specified in A.R.S. § 32-3252(E);
2. Shall fill a vacancy that occurs in an officer position at the next Board meeting; and
3. May hold additional meetings:
   a. As necessary to conduct the Board's business; and
   b. If requested by the Chair, a majority of the Board members, or upon written request from two Board members.

B. The Board shall conduct official business only when a quorum is present.

C. The vote of a majority of the Board members present is required for Board action.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-202. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-203. Academic Review Committee Meetings; Elections

A. Each ARC:
1. Shall meet at least annually in June and elect a Chair and Secretary;
2. Shall fill a vacancy that occurs in an officer position at the next ARC meeting; and
3. May hold additional meetings:
   a. As necessary to conduct the ARC's business; and
   b. If requested by the Chair of the ARC, a majority of the ARC, or upon written request from two members of the ARC.

B. An ARC shall conduct official business only when a quorum is present.

C. The vote of a majority of the ARC members present is required for ARC action.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-204. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-205. Change of Contact Information

A. The Board shall communicate with a licensee or applicant using the contact information provided to the Board including:
1. Home address and telephone number,
2. Address and telephone number for all places of employment,
3. Mobile telephone number, and
4. E-mail address.

B. To ensure timely communication with the Board, a licensee or applicant shall notify the Board in writing within 30 days after any change of the licensee's or applicant's contact information listed in subsection (A). The licensee or applicant shall ensure that the written notice provided to the Board includes the new contact information.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22

A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-206. Change of Name

A licensee or an applicant shall notify the Board in writing within 30 days after the applicant's or licensee's name is changed. The applicant or licensee shall attach to the written notice:

1. A copy of a legal document that establishes the name change; or
2. A copy of two forms of identification, one of which includes a picture of the applicant or licensee, reflecting the changed name.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-207. Confidential Records

A. Except as provided in A.R.S. § 32-3282, the following records are confidential and not open to public inspection:

1. Minutes of executive session;
2. Records classified as confidential by other laws, rules, or regulations;
3. College or university transcripts, licensure examination scores, medical or mental health information, and professional references of applicants except that the individual who is the subject of the information may view or copy the records or authorize release of these records to a third party;
4. Records for which the Board determines that public disclosure would have a significant adverse effect on the Board's ability to perform its duties or would otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the records no longer exists, the record shall be made available for public inspection and copying; and
5. All investigative materials regarding any pending or resolved complaint.

B. As provided under A.R.S. § 39-121, a person wanting to inspect Board records that are available for public inspection may do so at the Board office by appointment.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-208. Conviction of a Felony or Prior Disciplinary Action

The Board shall consider the following factors to determine whether a felony conviction or prior disciplinary action will result in imposing disciplinary sanctions including refusing to renew the license of a licensee or to issue a license to an applicant:

1. The age of the licensee or applicant at the time of the felony conviction or when the prior disciplinary action occurred;
2. The seriousness of the felony conviction or prior disciplinary action;
3. The factors underlying the conduct that led to the felony conviction or imposition of disciplinary action;
4. The length of time since the felony conviction or prior disciplinary action;
5. The relationship between the practice of the profession and the conduct giving rise to the felony conviction or prior disciplinary action;
6. The licensee's or applicant's efforts toward rehabilitation;
7. The assessments and recommendations of qualified professionals regarding the licensee's or applicant's rehabilitative efforts;
8. The licensee's or applicant's cooperation or non-cooperation with the Board's background investigation regarding the felony conviction or prior disciplinary action; and
9. Other factors the Board deems relevant.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Formatting error to subsection 7; corrected indent at the request of the Board (Supp. 17-2).

R4-6-209. Deadline Extensions

A. Deadlines established by date of service may be extended a maximum of two times by the chair of the Board or the chair of the ARC if a written request is postmarked or delivered to the Board no later than the required

deadline.

B. The Board shall not grant an extension for deadlines regarding renewal submission or late renewal submission.

C. If a deadline falls on a Saturday, Sunday, or official state holiday, the Board considers the next business day the deadline.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-210. Practice Limitations

The following licensees shall not engage in the independent practice of behavioral health but rather, shall practice behavioral health only under direct supervision as prescribed in R4-6-211:

1. Licensed baccalaureate social worker,
2. Licensed master social worker,
3. Licensed associate counselor,
4. Licensed associate marriage and family therapist,
5. Licensed substance abuse technician,
6. Licensed associate substance abuse counselor, or
7. Temporary licensee.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Section repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-211. Direct Supervision: Supervised Work Experience: General

A. A licensee subject to practice limitations pursuant to R4-6-210 shall practice in an entity with responsibility and clinical oversight of the behavioral health services provided by the licensee.

B. A masters level licensee working under direct supervision who operates or manages their own entity with immediate responsibility for the behavioral health services provided by the licensee shall provide the following to the board for approval prior to providing behavioral health services:

1. The name of their clinical supervisor who meets the following:
   a. Is independently licensed by the board in the same discipline as the supervisee, and who has practiced as an independently licensed behavioral health professional for a minimum of two years beyond the supervisor's licensure date;
   b. Is in compliance with the clinical supervisor educational requirements specified in R4-6-214;
   c. Is not prohibited from providing clinical supervision by a board consent agreement; and
2. A copy of the agreement between the clinical supervisor and supervisee demonstrating:
   a. The supervisee and supervisor will meet individually for one hour for every 20 hours of direct client contact provided, to include an onsite meeting every 60 days;
   b. Supervisee's clients will be notified of clinical supervisor's involvement in their treatment and the means to contact the supervisor;
   c. Supervision reports will be submitted to the board every six months;
   d. A 30 day notice is required prior to either party terminating the agreement;
   e. The supervisor and supervisee will notify the board within 10 days of the agreement termination date; and
   f. The supervisee will cease practicing within 60 days of the agreement termination date until such time as a subsequent agreement is provided to the board and approved.

C. A licensee complying with subsection (B) shall not provide clinical oversight and responsibility for the behavioral health services of another licensee subject to the practice limitations pursuant to R4-6-210.

D. To meet the supervised work experience requirements for licensure, direct supervision shall:

1. Meet the specific supervised work experience requirements contained in Articles 4, 5, 6, and 7;
2. Be acquired after completing the degree required for licensure and receiving certification or licensure from a state regulatory entity;
3. Be acquired before January 1, 2006, if acquired as an unlicensed professional practicing under an exemption provided in A.R.S. § 32-3271;
4. Involve the practice of behavioral health; and
5. Be for a term of no fewer than 24 months.

E. An applicant who acquired supervised work experience outside of Arizona may submit that experience for approval as it relates to the qualifications of the supervisor and the entity in which the supervision was acquired. The board may accept the supervised work experience as it relates to the supervisor and the entity if it met the requirements of the state in which the supervised work experience occurred. Nothing in this provision shall apply to the supervision requirements set forth in R4-6-403, R4-6-503, R4-6-603 and R4-6-705.

F. If the Board determines that an applicant engaged in unprofessional conduct related to services rendered while acquiring hours under supervised work experience, including clinical supervision, the Board shall not accept the hours to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706. Hours accrued before and after the time during which the conduct that was the subject of the finding of unprofessional conduct occurred, as determined by the Board, may be used to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706 so long as the hours are not the subject of an additional finding of unprofessional conduct.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-212. Clinical Supervision Requirements

A. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, and was provided by one of the following:

1. A clinical social worker, professional counselor, independent marriage and family therapist, or independent substance abuse counselor who:
   a. Holds an active and unrestricted license issued by the Board, and
   b. Has complied with the educational requirements specified in R4-6-214;
2. A mental health professional who holds an active and unrestricted license issued under A.R.S. Title 32, Chapter 19.1 as a psychologist and has complied with the educational requirements specified in R4-6-214; or
3. An individual who:
   a. Holds an active and unrestricted license to practice behavioral health,
   b. Is providing behavioral health services in Arizona:
      i. Under a contract or grant with the federal government under the authority of 25 U.S.C. § 5301 or § 1601-1683, or
      ii. By appointment under 38 U.S.C. § 7402 (8-11), and
   c. Has complied with the educational requirements specified in R4-6-214.

B. Unless an exemption was obtained under R4-6-212.01, the Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision was provided by an individual who:

1. Was qualified under subsection (A), and
2. Was employed by the behavioral health entity at which the applicant obtained hours of clinical supervision.

C. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision includes all of the following:

1. Reviewing ethical and legal requirements applicable to the supervisee's practice, including unprofessional conduct as defined in A.R.S. § 32-3251;
2. Monitoring the supervisee's activities to verify the supervisee is providing services safely and competently;
3. Verifying in writing that the supervisee provides clients with appropriate written notice of clinical supervision, including the means to obtain the name and telephone number of the supervisee's clinical supervisor;
4. Contemporaneously written documentation by the clinical supervisor of at least the following for each clinical supervision session at each entity:
   a. Date and duration of the clinical supervision session;
   b. A detailed description of topics discussed to include themes and demonstrated skills;
   c. Beginning on July 1, 2006, name and signature of the individual receiving clinical supervision;
   d. Name and signature of the clinical supervisor and the date signed; and
   e. Whether the clinical supervision occurred on a group or individual basis;
5. Maintaining the documentation of clinical supervision required under subsection (C)(4) for at least seven years;
6. Verifying that clinical supervision was not acquired from a family member as prescribed in R4-6-101(A)

(29).

7. Conducting on-going compliance review of the supervisee's clinical documentation to ensure the supervisee maintains adequate written documentation;
8. Providing instruction regarding:
   a. Assessment,
   b. Diagnosis,
   c. Treatment plan development, and
   d. Treatment;
9. Rating the supervisee's overall performance as at least satisfactory, using a form approved by the Board; and
10. Complying with the discipline-specific requirements in Articles 4 through 7 regarding clinical supervision.

D. The Board shall accept hours of clinical supervision submitted by an applicant for licensure if:

1. At least two hours of the clinical supervision were provided in a face-to-face setting during each six-month period;
2. No more than 90 hours of the clinical supervision were provided by videoconference and telephone;
3. No more than 15 of the 90 hours of clinical supervision provided by videoconference and telephone were provided by telephone; and
4. Each clinical supervision session was at least 30 minutes long.

E. Effective July 1, 2006, the Board shall accept hours of clinical supervision submitted by an applicant if at least 10 of the hours involve the clinical supervisor observing the supervisee providing treatment and evaluation services to a client. The clinical supervisor may conduct the observation:

1. In a face-to-face setting,
2. By videoconference,
3. By teleconference, or
4. By review of audio or video recordings.

F. The Board shall accept hours of clinical supervision submitted by an applicant from a maximum of six clinical supervisors.

G. The Board shall accept hours of clinical supervision obtained by an applicant in both individual and group sessions, subject to the following restrictions:

1. At least 25 of the clinical supervision hours involve individual supervision, and
2. Of the minimum 100 hours of clinical supervision required for licensure, the Board may accept:
   a. Up to 75 of the clinical supervision hours involving a group of two supervisees, and
   b. Up to 50 of the clinical supervision hours involving a group of three to six supervisees.

H. If an applicant provides evidence that a catastrophic event prohibits the applicant from obtaining documentation of clinical supervision that meets the standard specified in subsection (C), the Board may consider alternate documentation.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-212.01. Exemptions to the Clinical Supervision Requirements

The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-212 and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, unless an exemption is granted as follows:

1. An individual using supervised work experience acquired in Arizona may apply to the Board for an exemption from the following requirements:
   a. Qualifications of the clinical supervisor. The Board may grant an exemption to the supervisor qualification requirements in R4-6-212(A) and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, if the Board determines the behavioral health professional who provided or will provide the clinical supervision has:
      i. Education, training and experience necessary to provide clinical supervision;
      ii. Complied with the educational requirements specified in R4-6-214; and
      iii. An active and unrestricted license issued under A.R.S. Title 32 as a physician under Chapter 13 or 17 with certification in psychiatry or addiction medicine or as a nurse practitioner under Chapter 15 with certification in mental health;

b. Employment of clinical supervisor. The Board may grant an exemption to the requirement in R4-6-212(B) regarding employment of the supervisor by the behavioral health entity at which the supervisee obtains hours of clinical supervision if the supervisee provides verification that:
   i. The supervisor and behavioral health entity have a written contract providing the supervisor the same access to the supervisee's clinical records provided to employees of the behavioral health entity, that is signed and dated by both parties, and
   ii. Supervisee's clients authorized the release of their clinical records to the supervisor; and
c. Discipline-specific changes. The Board may grant an exemption to a requirement in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, that changed on November 1, 2015, and had the effect of making the clinical supervision previously completed or completed no later than October 31, 2017, non-compliant with the clinical supervision requirements. If the Board grants an exemption under this subsection, the Board shall evaluate the applicant's clinical supervision using the requirements in existence before November 1, 2015.

2. An individual using supervised work experience acquired outside of Arizona may apply to the Board for an exemption from the clinical supervision requirements in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made. The Board may grant an exemption for clinical supervision acquired outside of Arizona if the Board determines that the behavioral health professional providing the supervision met one of the following:
   a. Complied with the educational requirements specified in R4-6-214,
   b. Complied with the clinical supervisor requirements of the state in which the supervision occurred, or
   c. Was approved to provide supervision to the applicant by the state in which the supervision occurred.

Historical Note

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-213. Registry of Clinical Supervisors

A. The Board shall maintain a registry of individuals who have met the educational requirements to provide supervision that are specified in R4-6-214.

B. To be included on the registry of clinical supervisors, an individual shall submit the following to the Board:
   1. A registration form approved by the Board;
   2. Evidence of being qualified under R4-6-212(A); and
   3. Documentation of having completed the education required under R4-6-214.

C. The Board shall include an individual who complies with subsection (B) on the registry of clinical supervisors. To remain on the registry of clinical supervisors, an individual shall submit the following to the Board:
   1. A registration form approved by the Board;
   2. Evidence of being qualified under R4-6-212(A); and
   3. Documentation of having completed the continuing education required under R4-6-214.

D. If the Board notified an individual before November 1, 2015, that the Board determined the individual was qualified to provide clinical supervision, the Board shall include the individual on the registry maintained under subsection (A). To remain on the registry of clinical supervisors, the individual shall comply with subsection (C).

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Section R4-6-213 renumbered to Section R4-6-215; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-214. Clinical Supervisor Educational Requirements

A. The Board shall consider hours of clinical supervision submitted by an applicant only if the individual who provides the clinical supervision is qualified under R4-6-212(A) and complies with the following:
   1. Completes one of the following:
      a. At least 12 hours of training that meets the standard specified in R4-6-802(D), addresses clinical supervision, and includes the following:
         i. Role and responsibilities of a clinical supervisor;
         ii. Skills in providing effective oversight of and guidance to supervisees who diagnose, create treatment plans, and treat clients;

iii. Supervisory methods and techniques; and
iv. Fair and accurate evaluation of a supervisee's ability to plan and implement clinical assessment and treatment;

b. An approved clinical supervisor certification from the National Board for Certified Counselors/Center for Credentialing and Education;
c. A clinical supervisor certification from the International Certification and Reciprocity Consortium; or
d. A clinical member with an approved supervisor designation from the American Association of Marriage and Family Therapy; and

2. Completes the three clock hour Clinical Supervision Tutorial on Arizona Statutes/Regulations.

B. To continue providing clinical supervision, an individual qualified under subsection (A)(1)(a) shall, at least every three years, complete a minimum of nine hours of continuing training that:
1. Meets the standard specified in R4-6-802(D);
2. Concerns clinical supervision;
3. Addresses the topics listed in subsection (A)(1)(a); and
4. Includes the three clock hour Clinical Supervision Tutorial on Arizona Statutes/Regulations.

C. To continue providing clinical supervision, an individual qualified under subsections (A)(1)(b) through (d) shall:
1. Provide documentation that the national certification or designation was renewed before it expired, and
2. Complete the Clinical Supervision Tutorial on Arizona Statutes/Regulations.

D. An applicant submitting hours of clinical supervision by an individual qualified by meeting the clinical supervision education requirements in effect before the effective date of this Section shall provide documentation that the clinical supervisor was compliant with the education requirements during the period of supervision.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section R4-6-214 renumbered to Section R4-6-216; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-215. Fees and Charges

A. Under the authority provided by A.R.S. § 32-3272, the Board establishes and shall collect the following fees:
1. Application for license by examination: $250;
2. Application for license by endorsement: $250;
3. Application for a temporary license: $50;
4. Application for approval of educational program: $500;
5. Application for approval of an educational program change: $250;
6. Biennial renewal of first area of licensure: $325;
7. Biennial renewal of each additional area of licensure if all licenses are renewed at the same time: $163;
8. Late renewal penalty: $100 in addition to the biennial renewal fee;
9. Inactive status request: $100; and
10. Late inactive status request: $100 in addition to the inactive status request fee.

B. The Board shall charge the following amounts for the services it provides:
1. Issuing a duplicate license: $25;
2. Criminal history background check: $40;
3. Paper copy of records: $.50 per page after the first four pages;
4. Electronic copy of records: $25;
5. Copy of a Board meeting audio recording: $20;
6. Verification of licensure: $20 per discipline or free if downloaded from the Board's web site;
7. Board's rules and statutes book: $10 or free if downloaded from the Board's web site;
8. Mailing list of licensees: $150, and
9. Returned check due to insufficient funds: $50.

C. The application fees in subsections (A)(1) and (2) are non-refundable. Other fees established in subsection (A) are not refundable unless the provisions of A.R.S. § 41-1077 apply.

D. The Board shall accept payment of fees and charges as follows:
1. For an amount of $40 or less, a personal or business check;
2. For amounts greater than $40, a certified check, cashier's check, or money order; and
3. By proof of online payment by credit card for the following:
   a. All fees in subsection (A);
   b. The charge in subsection (B)(2) for a criminal history background check; and
   c. The charge in subsection (B)(8) for a mailing list of licensees.

Historical Note

New Section R4-6-215 renumbered from R4-6-213 and amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3347, with an immediate effective date of November 28, 2017 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-216. Foreign Equivalency Determination

The Board shall accept as qualification for licensure a degree from an institution of higher education in a foreign country if the degree is substantially equivalent to the educational standards required in this Chapter for professional counseling, marriage and family therapy, and substance abuse counseling licensure. To enable the Board to determine whether a foreign degree is substantially equivalent to the educational standards required in this Chapter, the applicant shall, at the applicant's expense, have the foreign degree evaluated by an evaluation service that is a member of the National Association of Credential Evaluation Services, Inc.

1. Any document that is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness;
2. The translation shall be completed by an individual, other than the applicant, and demonstrates no conflict of interest; and
3. The individual providing the translation may be college or university language faculty, a translation service, or an American consul.

Historical Note

New Section R4-6-216 renumbered from R4-6-214 and amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

ARTICLE 3. LICENSURE

R4-6-301. Application for a License by Examination

An applicant for a license by examination shall submit a completed application packet that contains the following:

1. A statement by the applicant certifying that all information submitted in support of the application is true and correct;
2. Identification of the license for which application is made;
3. The license application fee required under R4-6-215;
4. The applicant's name, date of birth, social security number, and contact information;
5. Each name or alias previously or currently used by the applicant;
6. The name of each college or university the applicant attended and an official transcript for all education used to meet requirements;
7. Verification of current or previous licensure or certification from the licensing or certifying entity as follows:
   a. Any license or certification ever held in the practice of behavioral health; and
   b. Any professional license or certification not identified in subsection (7)(a) held in the last 10 years;
8. Background information to enable the Board to determine whether, as required under A.R.S. § 32-3275(A)(3), the applicant is of good moral character;
9. A list of every entity for which the applicant has worked during the last 7 years;
10. If the relevant licensing examination was previously taken, an official copy of the score the applicant obtained on the examination;
11. A report of the results of a self-query of the National Practitioner Data Bank;
12. Documentation required under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
13. A completed and legible fingerprint card for a state and federal criminal history background check and payment as prescribed under R4-6-215 if the applicant has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Arizona Department of Public Safety;

and

14. Other documents or information requested by the Board to determine the applicant's eligibility.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015

(Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

R4-6-302. Licensing Time Frames

A. The overall time frames described in A.R.S. § 41-1072 for each type of license granted by the Board are listed in Table 1. The person applying for a license and the ARC may agree in writing to extend the substantive review and overall time frames up to 25 percent of the overall time frame.

B. The administrative completeness review time frame described in A.R.S. § 41-1072 begins when the Board receives an application packet.
1. If the application packet is not complete, the Board shall send the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time frames are suspended from the date the notice is served until the date the Board receives the deficient information from the applicant.
2. An applicant may assume an application packet is complete when the Board sends the applicant a written notice of administrative completeness or when the administrative completeness time frame specified in Table 1 expires.

C. An applicant shall submit all of the deficient information specified in the notice provided under subsection (B)(1) within 60 days after the deficiency notice is served.
1. If an applicant cannot submit all deficient information within 60 days after the deficiency notice is served, the applicant may obtain a 60-day extension by submitting a written notice to the Board postmarked or delivered before expiration of the 60 days. The written notice of extension shall document the reasons the applicant is unable to meet the 60-day deadline.
2. An applicant who requires an additional extension shall submit to the Board a written request that is delivered or postmarked before expiration of the initial extension and documents the reasons the applicant requires an additional extension. The Board shall notify the applicant in writing of its decision to grant or deny the request for an extension.
3. If an applicant fails to submit all of the deficient information within the required time, the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.

D. The substantive review time frame described in A.R.S. § 41-1072 begins on the date the administrative completeness time frame is complete as described under subsection (B)(2).
1. If an application is referred to the ARC for substantive review and the ARC finds that additional information is needed, the ARC shall provide a comprehensive written request for additional information to the applicant. The substantive review and overall time frames are suspended from the date the comprehensive written request for additional information is served until the applicant provides all information to the Board.
2. As provided under A.R.S. § 41-1075(A), the ARC and the applicant may agree in writing to allow the ARC to make additional supplemental requests for information. If the ARC issues an additional supplemental request for information, the substantive review and overall time frames are suspended from the date of the additional supplemental request for information until the applicant provides the information to the Board.
3. An applicant shall submit all of the information requested under subsection (D)(1) within 60 days after the comprehensive request for additional information is served. If the ARC issues an additional comprehensive request for information under subsection (D)(2), the applicant shall submit the additional information within 60 days after the additional comprehensive request for information is served. If the applicant cannot submit all requested information within the time provided, the applicant may obtain an extension under the terms specified in subsection (C)(2).
4. If an applicant fails to submit all of the requested information within the time provided under subsection (D)(3), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.

E. An applicant may withdraw an application for licensure under the terms specified in A.R.S. § 32-3275(D).

F. After the substantive review of an application is complete:
1. If the applicant is found ineligible for licensure, a recommendation shall be made to the Board that the applicant be denied licensure;
2. If the applicant is found eligible for licensure, a recommendation shall be made to the Board that the applicant be granted licensure;

G. After reviewing the recommendation made under subsection (F), the Board shall send a written notice to an applicant that either:
1. Grants a license to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 33

and this Chapter; or

2. Denies a license to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 33 and this Chapter. The Board shall ensure that the written notice of denial includes the information required under A.R.S. § 41-1092.03.

H. If a time frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time frame's last day.

Table 1. Time Frames (in Days)

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
License by Examination	A.R.S. § 32-3253 A.R.S. § 32-3275	270	90	180
Temporary License	A.R.S. § 32-3253 A.R.S. § 32-3279	90	30	60
License by Endorsement	A.R.S. § 32-3253 A.R.S. § 32-3274	270	90	180
License Renewal	A.R.S. § 32-3253 A.R.S. § 32-3273	270	90	180

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-303. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-304. Application for a License by Endorsement

An applicant who meets the requirements specified under A.R.S. § 32-3274 for a license by endorsement shall submit a completed application packet, as prescribed in R4-6-301, and the following:

1. The name of one or more other jurisdictions where the applicant is certified or licensed as a behavioral health professional by a state or federal regulatory entity, and has been for at least three years;
2. A verification of each certificate or license identified in subsection (1) by the state regulatory entity issuing the certificate or license that includes the following:
   a. The certificate or license number issued to the applicant by the state regulatory entity;
   b. The issue and expiration date of the certificate or license;
   c. Whether the applicant has been the subject of disciplinary proceedings by a state regulatory entity; and
   d. Whether the certificate or license is active and in good standing;
3. If applying at a practice level listed in A.R.S. § 32-3274(B), include:
   a. An official transcript as prescribed in R4-6-301(6); and
   b. If applicable, a foreign degree evaluation prescribed in R4-6-216 or R4-6-401; and
4. Documentation of completion of the Arizona Statutes/Regulations Tutorial.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-305. Inactive Status

A. A licensee seeking inactive status shall submit:
1. A written request to the Board before expiration of the current license, and
2. The fee specified in R4-6-215 for inactive status request.

B. To be placed on inactive status after license expiration, a licensee shall, within three months after the date of license expiration, comply with subsection (A) and submit the fee specified in R4-6-215 for late request for inactive status.

C. The Board shall grant a request for inactive status to a licensee upon receiving a written request for inactive status. The Board shall grant inactive status for a maximum of 24 months.

D. The Board shall not grant a request for inactive status that is received more than three months after license expiration.

E. Inactive status does not change:
1. The date on which the license of the inactive licensee expires, and
2. The Board's ability to start or continue an investigation against the inactive licensee.

F. To return to active status, a licensee on inactive status shall:
1. Comply with all renewal requirements prescribed under R4-6-801; and
2. Establish to the Board's satisfaction that the licensee is competent to practice safely and competently. To assist with determining the licensee's competence, the Board may order a mental or physical evaluation of the licensee at the licensee's expense.

G. Upon a showing of good cause, the Board shall grant a written request for modification or reduction of the continuing education requirement received from a licensee on inactive status. The Board shall consider the following to show good cause:
1. Illness or disability,
2. Active military service, or
3. Any other circumstance beyond the control of the licensee.

H. The Board may, upon a written request filed before the expiration of the original 24 months of inactive status and for good cause, as described in subsection (G), permit an inactive licensee to remain on inactive status for one additional period not to exceed 24 months. To return to active status after being placed on a 24-month extension of inactive status, a licensee shall, comply with the requirements in subsection (F) and complete an additional 30 hours of continuing education during the 24-month extension.

I. A licensee on inactive status shall not engage in the practice of behavioral health.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-306. Application for a Temporary License

A. To be eligible for a temporary license, an applicant shall:
1. Have applied under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement,
2. Have submitted an application for a temporary license using a form approved by the Board and paid the fee required under R4-6-215, and
3. Be one of the following:
   a. Applying for a license by endorsement;
   b. Applying for a license by examination, not currently licensed or certified by a state behavioral health regulatory entity, and:
      i. Within 12 months after obtaining a degree from the education program on which the applicant is relying to meet licensing requirements,
      ii. Has completed all licensure requirements except passing the required examination, and
      iii. Has not previously taken the required examination; or
   c. Applying for a license by examination and currently licensed or certified by another state behavioral health regulatory entity.

B. An individual is not eligible for a temporary license if the individual:
1. Is the subject of a complaint pending before any state behavioral health regulatory entity,
2. Has had a license or certificate to practice a health care profession suspended or revoked by any state regulatory entity,
3. Has a criminal history or history of disciplinary action by a state behavioral health regulatory entity unless the Board determines the history is not of sufficient seriousness to merit disciplinary action, or

4. Has been previously denied a license by the Board.

C. A temporary license issued to an applicant expires one year after issuance by the Board.

D. A temporary license issued to an applicant who has not previously passed the required examination for licensure expires immediately if the temporary licensee:
1. Fails to take the required examination by the expiration date of the temporary license; or
2. Takes but fails the required examination.

E. A temporary licensee shall provide written notice and return the temporary license to the Board if the temporary licensee fails the required examination.

F. An applicant who is issued a temporary license shall practice as a behavioral health professional only under direct supervision. The temporary license may contain restrictions as to time, place, and supervision that the Board deems appropriate.

G. The Board shall issue a temporary license only in the same discipline for which application is made under subsection (A).

H. The Board shall not extend the time of a temporary license or grant an additional temporary license based on the application submitted under subsection (A).

I. A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3281. A temporary license may be summarily revoked without a hearing under A.R.S. § 32-3279(C)(4).

J. If the Board denies a license by examination or endorsement to a temporary licensee, the temporary licensee shall return the temporary license to the Board within five days of receiving the Board's notice of the denial.

K. If a temporary licensee withdraws the license application submitted under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement, the temporary license expires.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

R4-6-307. Approval of an Educational Program

A. To obtain the Board's approval of an educational program, an authorized representative of the regionally accredited college or university shall submit:
1. An application, using a form approved by the Board;
2. The fee prescribed under R4-6-215; and
3. Documentary evidence that the educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.

B. The Board shall review the application materials for administrative completeness and determine whether additional information is necessary.
1. If the application packet is incomplete, the Board shall send a written deficiency notice to the applicant specifying the missing or incomplete information. The applicant shall provide the additional information within 60 days after the deficiency notice is served.
2. The applicant may obtain a 60-day extension of time to provide the deficient information by submitting a written request to the Board before expiration of the time specified in subsection (B)(1).
3. If an applicant fails to provide the deficient information within the time specified in the written notice or as extended under subsection (B)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).

C. When an application for approval of an educational program is administratively complete, the ARC shall substantively review the application packet.
1. If the ARC finds that additional information is needed, the ARC shall provide a written comprehensive request for additional information to the applicant.
2. The applicant shall provide the additional information within 60 days after the comprehensive request of additional information is served.
3. If an applicant fails to provide the additional information within the time specified under subsection (C)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).

D. After the ARC determines the substantive review is complete:
1. If the ARC finds the applicant's educational program is eligible for approval, the ARC shall recommend to

the Board that the educational program be approved.

2. If the ARC finds the applicant's educational program is ineligible for approval, the ARC shall send written notice to the applicant of the finding of ineligibility with an explanation of the basis for the finding. An applicant may appeal a finding of ineligibility for educational program approval using the following procedure:
   a. Submit to the ARC a written request for an informal review meeting within 30 days after the notice of ineligibility is served. If the applicant does not request an informal review meeting within the time provided, the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
   b. If the ARC receives a written request for an informal review meeting within the 30 days provided, the ARC shall schedule the informal review meeting and provide at least 30 days' notice of the informal review meeting to the applicant.
   c. At the informal review meeting, the ARC shall provide the applicant an opportunity to present additional information regarding the curriculum of the educational program.
   d. When the informal review is complete, the ARC shall make a second finding whether the educational program is eligible for approval and send written notice of the second finding to the applicant.
   e. An applicant that receives a second notice of ineligibility under subsection (D)(2)(d), may appeal the finding by submitting to the Board, within 30 days after the second notice is served, a written request for a formal administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
   f. The Board shall either refer a request for a formal administrative hearing to the Office of Administrative Hearings or schedule the hearing before the Board. If no request for a formal administrative hearing is made under subsection (D)(2)(e), the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
   g. If a formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation of the Administrative Law Judge and issue an order either granting or denying approval of the educational program.
   h. If a formal administrative hearing is held before the Board, the Board shall issue findings of fact and conclusions of law and issue an order either granting or denying approval of the educational program.
   i. The Board shall send the applicant a copy of the findings of fact, conclusions of law, and order.

E. The Board shall add an approved educational program to the list of approved educational programs that the Board maintains.

F. The Board's approval of an educational program is valid for five years unless the accredited college or university makes a change to the educational program that is inconsistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.

G. An authorized representative of a regionally accredited college or university with a Board-approved educational program shall certify annually, using a form available from the Board, that there have been no changes to the approved educational program.

H. If a regionally accredited college or university makes one of the following changes to an approved educational program, the regionally accredited college or university shall notify the Board within 60 days after making the change and request approval of the educational program change under subsection (I):
   1. Change to more than 25 percent of course competencies;
   2. Change to more than 25 percent of course learning objectives;
   3. Addition of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701; or
   4. Deletion of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701.

I. To apply for approval of an educational program change, an authorized representative of the regionally accredited college or university shall submit:
   1. An approved educational program change form available from the Board;
   2. The fee prescribed under R4-6-215; and
   3. Documentary evidence that the change to the approved educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.

J. To maintain approved status of an educational program after five years, an authorized representative of the regionally accredited college or university shall make application under subsection (A).

K. The Board shall process the materials submitted under subsections (I) and (J) using the procedure specified in subsections (B) through (D).

L. Unless an educational program is currently approved by the Board under this Section, the regionally accredited college or university shall not represent that the educational program is Board approved in any program or marketing materials.

Historical Note

New Section made by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Section

repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 4. SOCIAL WORK

R4-6-401. Curriculum

A. An applicant for licensure as a baccalaureate social worker shall have a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.

B. An applicant for licensure as a master or clinical social worker shall have a master or higher degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-402. Examination

A. To be licensed as a baccalaureate social worker, an applicant shall receive a passing score on the bachelors, masters, advanced generalist, or clinical examination offered by ASWB.

B. To be licensed as a master social worker, an applicant shall receive a passing score on the masters, advanced generalist, or clinical examination offered by ASWB.

C. To be licensed as a clinical social worker, an applicant shall receive a passing score on the clinical examination offered by ASWB.

D. An applicant for baccalaureate, master, or clinical social worker licensure shall receive a passing score on an approved examination for the level of licensure requested within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved licensure examination more than three times during the 12-month testing period.

E. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.

F. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure

A. An applicant for clinical social worker licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of clinical social work in no less than 24 months. Supervised work experience in the practice of clinical social work shall include:

1. At least 1600 hours of direct client contact involving the use of psychotherapy;
2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-404; and
4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.

D. During the period of required supervised work experience specified in subsection (A), an applicant for clinical social worker licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as a baccalaureate or master social worker.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-404. Clinical Supervision for Clinical Social Worker Licensure

A. An applicant for clinical social worker licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-403.

B. The Board shall accept hours of clinical supervision for clinical social worker licensure if the hours required under subsection (A) meet the following:
1. At least 50 hours are supervised by a clinical social worker licensed by the Board, and
2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.

C. The Board shall not accept hours of clinical supervision for clinical social worker licensure provided by a substance abuse counselor.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-405. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 5. COUNSELING

R4-6-501. Curriculum

A. An applicant for licensure as an associate or professional counselor shall have a master's or higher degree with a major emphasis in counseling from:
1. A program accredited by CACREP or CORE that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E);
2. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E); or
3. A program from a regionally accredited college or university that consists of at least 60 semester or 90 quarter credit hours, meets the requirements specified in subsections (C) and (D), and includes a supervised counseling practicum as prescribed under subsection (E).

B. To assist the Board to evaluate a program under subsection (A)(3), an applicant who obtained a degree from a program under subsection (A)(3) shall attach the following to the application required under R4-6-301:
1. Published college or university course descriptions for the year and semester enrolled for each course submitted to meet curriculum requirements,
2. Verification, using a form approved by the Board, of completing the supervised counseling practicum required under subsection (E); and
3. Other documentation requested by the Board.

C. The Board shall accept for licensure the curriculum from a program not accredited by CACREP or CORE if the curriculum includes at least 60 semester or 90 quarter credit hours in counseling-related coursework, of which at least three semester or 4 quarter credit hours are in each of the following eight core content areas:
1. Professional orientation and ethical practice: Studies that provide a broad understanding of professional counseling ethics and legal standards, including but not limited to:
   a. Professional roles, functions, and relationships;
   b. Professional credentialing;
   c. Ethical standards of professional organizations; and
   d. Application of ethical and legal considerations in counseling;
2. Social and cultural diversity: Studies that provide a broad understanding of the cultural context of

relationships, issues, and trends in a multicultural society, including but not limited to:
   a. Theories of multicultural counseling, and
   b. Multicultural competencies and strategies;
3. Human growth and development: Studies that provide a broad understanding of the nature and needs of individuals at all developmental stages, including but not limited to:
   a. Theories of individual and family development across the life-span, and
   b. Theories of personality development;
4. Career development: Studies that provide a broad understanding of career development and related life factors, including but not limited to:
   a. Career development theories, and
   b. Career decision processes;
5. Helping relationship: Studies that provide a broad understanding of counseling processes, including but not limited to:
   a. Counseling theories and models,
   b. Essential interviewing and counseling skills, and
   c. Therapeutic processes;
6. Group work: Studies that provide a broad understanding of group development, dynamics, counseling theories, counseling methods and skills, and other group work approaches, including but not limited to:
   a. Principles of group dynamics,
   b. Group leadership styles and approaches, and
   c. Theories and methods of group counseling;
7. Assessment: Studies that provide a broad understanding of individual and group approaches to assessment and evaluation, including but not limited to:
   a. Diagnostic process including differential diagnosis and use of diagnostic classification systems such as the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases,
   b. Use of assessment for diagnostic and intervention planning purposes, and
   c. Basic concepts of standardized and non-standardized testing; and
8. Research and program evaluation: Studies that provide a broad understanding of recognized research methods and design and basic statistical analysis, including but not limited to:
   a. Qualitative and quantitative research methods, and
   b. Statistical methods used in conducting research and program evaluation.

D. In evaluating the curriculum required under subsection (C), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

E. The Board shall accept a supervised counseling practicum that is part of a master's or higher degree program if the supervised counseling practicum meets the following standards:
1. Consists of at least 700 clock hours in a professional counseling setting,
2. Includes at least 240 hours of direct client contact,
3. Provides an opportunity for the supervisee to perform all activities associated with employment as a professional counselor,
4. Oversight of the counseling practicum is provided by a faculty member, and
5. Onsite supervision is provided by an individual approved by the college or university.

F. The Board shall require that an applicant for professional counselor licensure who received a master's or higher degree before July 1, 1989, from a program that did not include a supervised counseling practicum complete three years of post-master's or higher degree work experience in counseling under direct supervision. One year of a doctoral-clinical internship may be substituted for one year of supervised work experience.

G. The Board shall accept for licensure only courses that the applicant completed with a passing grade.

H. The Board shall deem an applicant to meet the curriculum requirements for professional counselor licensure if the applicant:
1. Holds an active and in good standing associate counselor license issued by the Board; and
2. Met the curriculum requirements with a master's degree in a behavioral health field from a regionally accredited university when the associate counselor license was issued.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015

(Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-502. Examination

A. The Board approves the following examinations for applicants for counselor licensure:
1. National Counselor Examination for Licensure and Certification offered by the National Board for Certified Counselors,
2. National Clinical Mental Health Counseling Examination offered by the National Board for Certified Counselors, and
3. Certified Rehabilitation Counselor Examination offered by the Commission on Rehabilitation Counselor Certification.

B. Except as specified in subsection (E), an applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an examination more than three times during the 12-month testing period.

C. If an applicant does not receive a passing score within the 12 months referenced in subsection (B), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.

D. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

E. The Board shall deem an applicant for professional counselor licensure to meet the exam requirement if the applicant holds an active and in good standing associate counselor license issued by the Board according to A.R.S. § 32-3274 or A.R.S. § 32-4302.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-503. Supervised Work Experience for Professional Counselor Licensure

A. An applicant for professional counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of professional counseling in no less than 24 months. The applicant shall ensure that the supervised work experience includes:
1. At least 1600 hours of direct client contact involving the use of psychotherapy;
2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-504; and
4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.

D. During the period of supervised work experience specified in subsection (A), an applicant for professional counselor licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as an associate counselor.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-504. Clinical Supervision for Professional Counselor Licensure

A. An applicant for professional counselor licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-503.

B. The Board shall accept hours of clinical supervision for professional counselor licensure from the following behavioral health professionals who meet the educational requirements under R4-6-214:
1. A licensed professional counselor;

2. A licensed clinical social worker;
3. A licensed marriage and family therapist;
4. A licensed psychologist; or
5. An individual for whom an exemption was obtained under R4-6-212.01.

C. The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for professional counselor licensure.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-505. Post-degree Programs

An applicant who has a master's or higher degree with a major emphasis in counseling but does not meet all curriculum requirements specified in R4-6-501 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies as follows:

1. An applicant whose degree did not consist of 60 semester or 90 quarter credit hours may take graduate or higher level counseling-related courses to meet the curriculum requirement;
2. An applicant whose degree did not include the eight core content areas specified in R4-6-501(C) may take graduate or higher level courses to meet the core content requirement; and
3. An applicant whose practicum did not meet the requirements specified in R4-6-501(E) may obtain additional graduate level supervised practicum hours.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

R4-6-601. Curriculum

A. An applicant for licensure as an associate marriage and family therapist or a marriage and family therapist shall have a master's or higher degree from a regionally accredited college or university in a behavioral health science program that:
1. Is accredited by COAMFTE;
2. Was previously approved by the Board under A.R.S. § 32-3253(A)(14); or
3. Includes at least three semester or four quarter credit hours in each of the number of courses specified in the six core content areas listed in subsection (B).

B. A program under subsection (A)(3) shall include:
1. Marriage and family studies: Three courses from a family systems theory orientation that collectively contain at minimum the following elements:
   a. Introductory family systems theory;
   b. Family development;
   c. Family systems, including marital, sibling, and individual subsystems; and
   d. Gender and cultural issues;
2. Marriage and family therapy: Three courses that collectively contain at minimum the following elements:
   a. Advanced family systems theory and interventions;
   b. Major systemic marriage and family therapy treatment approaches;
   c. Communications;
   and
   d. Sex therapy;
3. Human development: Three courses that may integrate family systems theory that collectively contain at minimum the following elements:
   a. Normal and abnormal human development;
   b. Human sexuality; and
   c. Psychopathology and abnormal behavior;
4. Professional studies: One course including at minimum:
   a. Professional ethics as a therapist, including legal and ethical responsibilities and liabilities; and
   b. Family law;

5. Research: One course in research design, methodology, and statistics in behavioral health science; and
6. Supervised practicum: Two courses that supplement the practical experience gained under subsection (D).

C. In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

D. A program's supervised practicum shall meet the following standards:
1. Provides an opportunity for the enrolled student to provide marriage and family therapy services to individuals, couples, and families in an educational or professional setting under the direction of a faculty member or supervisor designated by the college or university;
2. Includes at least 300 client-contact hours provided under direct supervision;
3. Has supervision provided by a designated licensed marriage and family therapist.

E. An applicant may submit a written request to the ARC for an exemption from the requirement specified in subsection (D)(3). The request shall include the name of the behavioral health professional proposed by the applicant to act as supervisor of the practicum, a copy of the proposed supervisor's transcript and curriculum vitae, and any additional documentation requested by the ARC. The ARC shall grant the exemption if the ARC determines the proposed supervisor is qualified by education, experience, and training to provide supervision.

F. The Board shall deem an applicant to meet the curriculum requirements for marriage and family therapist licensure if the applicant:
1. Holds an active and in good standing associate marriage and family therapist license issued by the Board; and
2. Met the curriculum requirements with a master's degree in a behavioral health field from a regionally accredited university when the associate marriage and family therapist license was issued.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-602. Examination

A. The Board approves the marriage and family therapy licensure examination offered by the Association of Marital and Family Therapy Regulatory Boards.

B. Except as specified in subsection (E), an applicant shall pass the approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take the examination more than three times during the 12-month testing period.

C. If an applicant does not receive a passing score within the 12 months referenced in subsection (B), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.

D. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

E. The Board shall deem an applicant for marriage and family therapist licensure to meet the examination requirement if the applicant holds an active and in good standing associate marriage and family therapist license issued by the Board according to A.R.S. § 32-3274 or A.R.S. § 32-4302.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt emergency rulemaking at 21 A.A.R. 521, with Attorney General approval effective March 18, 2015 (Supp. 15-1). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure

A. An applicant for licensure as a marriage and family therapist shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of marriage and family therapy in no less than 24 months. The

applicant shall ensure that the supervised work experience includes:

1. At least 1600 hours of direct client contact involving the use of psychotherapy:
   a. At least 1000 of the 1600 hours of direct client contact are with couples or families; and
   b. No more than 400 of the 1600 hours of direct client contact are in psychoeducation and at least 60 percent of psychoeducation hours are with couples or families;
2. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-604; and
3. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.

D. During the period of supervised work experience specified in subsection (A), an applicant for marriage and family therapist licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as an associate marriage and family therapist.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure

A. An applicant for marriage and family therapy licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meets the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-603.

B. The Board shall accept hours of clinical supervision for marriage and family therapist licensure if:

1. The hours are supervised by an individual who meets the educational requirements under R4-6-214;
2. At least 50 of the hours are supervised by:
   a. A marriage and family therapist licensed by the Board, or
   b. An independently licensed behavioral health professional who holds an Approved Supervisor designation from the American Association for Marriage and Family Therapy; and
3. The remaining hours are supervised by one or more of the following:
   a. A professional counselor licensed by the Board;
   b. A clinical social worker licensed by the Board;
   c. A marriage and family therapist licensed by the Board; or
   d. A psychologist licensed under A.R.S. Title 32, Chapter 19.1; or
4. The hours are supervised by an individual for whom an exemption is obtained under R4-6-212.01.

C. The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for marriage and family therapy licensure.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 1386, effective June 4, 2006 (Supp. 06-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-605. Post-degree Programs

An applicant who has a master's or higher degree in a behavioral health science but does not meet all curriculum requirements specified in R4-6-601 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies if:

1. The deficiencies constitute no more than 12 semester or 16 quarter credit hours; and
2. Courses taken to remove the deficiencies are at a graduate or higher level.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-606. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 7. SUBSTANCE ABUSE COUNSELING

R4-6-701. Licensed Substance Abuse Technician Curriculum

A. An applicant for licensure as a substance abuse technician shall have:
1. An associate's or bachelor's degree from a regionally accredited college or university in a program accredited by NASAC;
2. An associate's or bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14); or
3. An associate's or bachelor's degree from a regionally accredited college or university in a behavioral health science program that includes coursework from the seven core content areas listed in subsection (B).

B. An associate's or bachelor's degree under subsection (A)(3), shall include at least three semester or four quarter credit hours in each of the following core content areas:
1. Psychopharmacology, including but not limited to effects on mood, behavior, cognition and physiology;
2. Models of treatment and relapse prevention, including but not limited to philosophies and practices of generally accepted and evidence-supported models;
3. Group work: Group dynamics and processes as they relate to addictions and substance use disorders;
4. Working with diverse populations: Issues and trends in a multicultural and diverse society as they relate to substance use disorder and addiction;
5. Co-occurring disorders, including but not limited to philosophies and practices of generally accepted and evidence-supported models;
6. Ethics, including but not limited to:
   a. Legal and ethical responsibilities and liabilities;
   b. Standards of professional behavior and scope of practice;
   c. Client rights, responsibilities, and informed consent; and
   d. Confidentiality and other legal considerations in the practice of behavioral health; and
7. Assessment, diagnosis, and treatment. Use of assessment and diagnosis to develop appropriate treatment interventions for substance use disorders or addictions.

C. The Board shall waive the education requirement in subsection (A) for an applicant requesting licensure as a substance abuse technician if the applicant demonstrates all of the following:
1. The applicant provides services under a contract or grant with the federal government under the authority of 25 U.S.C. § 5301 or § 1601 – 1683;
2. The applicant has obtained at least the equivalent of a high school diploma;
3. Because of cultural considerations, obtaining the degree required under subsection (A) would be an extreme hardship for the applicant; and
4. The applicant has completed at least 6400 hours of supervised work experience in substance abuse counseling, as prescribed in R4-6-705(C), in no less than 48 months within the seven years immediately preceding the date of application.

D. In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

E. An applicant for licensure as a substance abuse technician who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 4532, effective January 1, 2009 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Clerical error correction made to subsection (B)(4); the Office inadvertently did not remove repealed text as filed at 22 A.A.R. 3238; correction made at the request of the Board (Supp. 17-2). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp.

20-4).

R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum

A. An applicant for licensure as an associate substance abuse counselor shall have one of the following:
1. A bachelor's degree from a regionally accredited college or university in a program accredited by NASAC and supervised work experience that meets the standards specified in R4-6-705(A);
2. A master's or higher degree from a regionally accredited college or university in a program accredited by NASAC;
3. A bachelor's degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and supervised work experience that meets the standards specified in R4-6-705(A);
4. A master's or higher degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (C); or
5. A bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and supervised work experience that meets the standards specified in R4-6-705(A); or
6. A master's or higher degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and includes at least 300 hours of supervised practicum as prescribed under subsection (C).

B. In evaluating the curriculum required under subsection (A)(3) or (4), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

C. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.

D. The Board shall deem an applicant to meet the curriculum requirements for associate substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing substance abuse technician license issued by the Board; and
2. Met the curriculum requirements with a bachelor's degree when the substance abuse technician license was issued.

E. An applicant for licensure as an associate substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum

A. An applicant for licensure as an independent substance abuse counselor shall have a master's or higher degree from a regionally accredited college or university in one of the following:
1. A program accredited by NASAC;
2. A behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (D); or
3. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that includes at least 300 hours of supervised practicum as prescribed under subsection (D).

B. In addition to the degree requirement under subsection (A), an applicant for licensure as an independent substance abuse counselor shall complete the supervised work experience requirements prescribed under R4-6-705(B).

C. In evaluating the curriculum required under subsection (A)(2), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

D. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders

with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.

E. The Board shall deem an applicant to meet the curriculum requirements for independent substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing associate substance abuse counselor license issued by the Board; and
2. Met the curriculum requirements with a master's degree when the associate substance abuse counselor license was issued.

F. An applicant for licensure as an independent substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-704. Examination

A. The Board approves the following licensure examinations for an applicant for substance abuse technician licensure:
1. Alcohol and Drug Counselor and Advanced Alcohol and Drug Counselor Examinations offered by the International Certification and Reciprocity Consortium, and
2. Level I or higher examinations offered by the NAADAC, the Association of Addiction Professionals.

B. The Board approves the following licensure examinations for an applicant for associate or independent substance abuse counselor licensure:
1. Advanced Alcohol and Drug Counselor Examination offered by the International Certification and Reciprocity Consortium,
2. Level II or higher examinations offered by the NAADAC, the Association of Addiction Professionals, and
3. Examination for Master Addictions Counselors offered by the National Board for Certified Counselors.

C. The Board shall deem an applicant for independent substance abuse counselor licensure as meeting the examination requirements if all of the following apply:
1. The applicant has an active associate substance abuse counselor license;
2. The applicant passed a written examination listed in subsection (A) before November 1, 2015; and
3. The applicant submitted an application to the Board on or after November 1, 2015.

D. An applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved examination more than three times during the 12-month testing period.

E. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.

F. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure

A. An applicant for associate substance abuse counselor licensure who has a bachelor's degree and is required under R4-6-702(A) to participate in a supervised work experience shall complete at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience relates to substance use disorder and addiction and meets the following standards:
1. At least 1600 hours of direct client contact involving the use of psychotherapy related to substance use disorder and addiction issues,

2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation,
3. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services,
4. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706, and
5. At least one hour of clinical supervision in any month in which the applicant provides direct client contact.

B. An applicant for independent substance abuse counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience meets the standards specified in subsection (A).

C. An applicant for substance abuse technician qualifying under R4-6-701(C) shall complete at least 6400 hours of supervised work experience in no less than 48 months. The applicant shall ensure that the supervised work experience includes:
1. At least 3200 hours of direct client contact;
2. Using psychotherapy to assess, diagnose, and treat individuals, couples, families, and groups for issues relating to substance use disorder and addiction; and
3. At least 200 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706.

D. An applicant may submit more than the required number of hours of supervised work experience for consideration by the Board.

E. During the period of required supervised work experience, an applicant for substance abuse licensure shall practice behavioral health under the limitations specified in R4-6-210.

F. There is no supervised work experience requirement for an applicant for licensure as:
1. A substance abuse technician qualifying under R4-6-701(A), or
2. An associate substance abuse counselor qualifying under R4-6-702(A) with a master's or higher degree.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure

A. During the supervised work experience required under R4-6-705, an applicant for substance abuse counselor licensure shall demonstrate that the applicant received, for the level of licensure sought, at least the number of hours of clinical supervision specified in R4-6-705 that meets the requirements in subsection (B) and R4-6-212.

B. The Board shall accept hours of clinical supervision for substance abuse licensure if the focus of the supervised hours relates to substance use disorder and addiction and:
1. At least 50 hours are supervised by:
   a. An independent substance abuse counselor licensed by the Board; or
   b. An independently licensed behavioral health professional who:
      i. Provides evidence of knowledge and experience in substance use disorder treatment; and
      ii. Is approved by the ARC or designee, and
2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-707. Post-degree Programs

An applicant who has a behavioral health science degree from a regionally accredited college or university but does not meet all curriculum requirements specified in R4-6-701, R4-6-702, or R4-6-703 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies. The Board shall accept a post-graduate course from a regionally accredited college or university to remove a curriculum deficiency if the course meets the following requirement, as applicable:
1. For an applicant who has an associate's or bachelor's degree, an undergraduate or higher level course; or
2. For an applicant who has a master's degree, a graduate or higher level course.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section

repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

R4-6-801. Renewal of Licensure

A. Under A.R.S. § 32-3273, a license issued by the Board under A.R.S. Title 32, Chapter 33 and this Chapter is renewable every two years. A licensee who has more than one license may request in writing that the Board synchronize the expiration dates of the licenses. The licensee shall pay any prorated fees required to accomplish the synchronization.

B. A licensee holding an active license to practice behavioral health in this state shall complete 30 clock hours of continuing education as prescribed under R4-6-802 between the date the Board received the licensee's last renewal application and the next license expiration date. A licensee may not carry excess continuing education hours from one license period to the next.

C. To renew licensure, a licensee shall submit the following to the Board on or before the date of license expiration or as specified in A.R.S. § 32-4301:

1. A renewal application form, approved by the Board. The licensee shall ensure that the renewal form:
   a. Includes a list of 30 clock hours of continuing education that the licensee completed during the license period;
   b. If the documentation previously submitted under R4-6-301(12) was a limited form of work authorization issued by the federal government, includes evidence that the work authorization has not expired; and
   c. Is signed by the licensee attesting that all information submitted is true and correct;
2. Payment of the renewal fee as prescribed in R4-6-215; and
3. Other documents requested by the Board to determine that the licensee continues to meet the requirements under A.R.S. Title 32, Chapter 33 and this Chapter.

D. The Board may audit a licensee to verify compliance with the continuing education requirements under subsection (B). A licensee shall maintain documentation verifying compliance with the continuing education requirements as prescribed under R4-6-803.

E. A licensee whose license expires may have the license reinstated by complying with subsection (C) and paying a late renewal penalty within 90 days of the license expiration date. A license reinstated under this subsection is effective with no lapse in licensure.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-802. Continuing Education

A. A licensee who maintains more than one license may apply the same continuing education hours for renewal of each license if the content of the continuing education relates to the scope of practice of each license.

B. For each license period, a licensee may report a maximum of:

1. Ten clock hours of continuing education for first-time presentations by the licensee that deal with current developments, skills, procedures, or treatments related to the practice of behavioral health. The licensee may claim one clock hour for each hour spent preparing, writing, and presenting information;
2. Six clock hours of continuing education for attendance at a Board meeting where the licensee is not:
   a. A member of the Board,
   b. The subject of any matter on the agenda, or
   c. The complainant in any matter that is on the agenda; and
3. Ten clock hours of continuing education for service as a Board or ARC member.

C. For each license period, a licensee shall report:

1. A minimum of three clock hours of continuing education sponsored, approved, or offered by an entity listed in subsection (D) in:
   a. Behavioral health ethics or mental health law, and
   b. Cultural competency and diversity; and
2. Completion of the three clock hour Arizona Statutes/Regulations Tutorial.

D. A licensee shall participate in continuing education that relates to the scope of practice of the license held and to maintaining or improving the skill and competency of the licensee. The Board has determined that in addition to the continuing education listed in subsections (B) and (C), the following continuing education meets this standard:

1. Activities sponsored or approved by national, regional, or state professional associations or organizations in the specialties of marriage and family therapy, professional counseling, social work, substance abuse counseling, or in the allied professions of psychiatry, psychiatric nursing, psychology, or pastoral counseling;
2. Programs in behavioral health sponsored or approved by a regionally accredited college or university;
3. In-service training, courses, or workshops in behavioral health sponsored by federal, state, or local social service agencies, public school systems, or licensed health facilities or hospitals;
4. Graduate or undergraduate courses in behavioral health offered by a regionally accredited college or university. One semester-credit hour or the hour equivalent of one semester hour equals 15 clock hours of continuing education;
5. Publishing a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of behavioral health. For the license period in which publication occurs, the licensee may claim one clock hour for each hour spent preparing and writing materials; and
6. Programs in behavioral health sponsored by a state superior court, adult probation department, or juvenile probation department.

E. The Board has determined that a substance abuse technician, associate substance abuse counselor, or an independent substance abuse counselor shall ensure that at least 20 of the 30 clock hours of continuing education required under R4-6-801(B) are in the following categories:
1. Pharmacology and psychopharmacology,
2. Addiction processes,
3. Models of substance use disorder and addiction treatment,
4. Relapse prevention,
5. Interdisciplinary approaches and teams in substance use disorder and addiction treatment,
6. Substance use disorder and addiction assessment and diagnostic criteria,
7. Appropriate use of substance use disorder and addiction treatment modalities,
8. Substance use disorder and addiction as it related to diverse populations,
9. Substance use disorder and addiction treatment and prevention,
10. Clinical application of current substance use disorder and addiction research, or
11. Co-occurring disorders.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-803. Continuing Education Documentation

A. A licensee shall maintain documentation of continuing education for 24 months following the date of the license renewal.

B. The licensee shall retain the following documentation as evidence of participation in continuing education:
1. For conferences, seminars, workshops, and in-service training presentations, a signed certificate of attendance or a statement from the provider verifying the licensee's participation in the activity, including the title of the program, name, address, and telephone number of the sponsoring organization, names of presenters, date of the program, and clock hours involved;
2. For first-time presentations by a licensee, the title of the program, name, address, and telephone number of the sponsoring organization, date of the program, syllabus, and clock hours required to prepare and make the presentation;
3. For a graduate or undergraduate course, an official transcript;
4. For an audited graduate or undergraduate course, an official transcript; and
5. For attendance at a Board meeting, a signed certificate of attendance prepared by the Board.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-804. Repealed

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by

exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 9. APPEAL OF LICENSURE OR LICENSURE RENEWAL INELIGIBILITY

R4-6-901. Appeal Process for Licensure Ineligibility

A. An applicant for licensure may be found ineligible because of unprofessional conduct or failure to meet licensure requirements.

B. If the ARC finds an applicant is ineligible because of failure to meet licensure requirements:

1. The ARC shall send a written notice of the finding of ineligibility to the applicant with an explanation of the basis for the finding.
2. An applicant who wishes to appeal the finding of ineligibility shall submit a written request for an informal review meeting to the ARC within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the ARC shall recommend to the Board that licensure be denied and the licensee's file be closed with no recourse to appeal.
3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2), the ARC shall schedule the informal review meeting and provide at least 30-days' notice to the applicant. At the informal review meeting, the ARC shall allow the applicant to present additional information regarding the applicant's qualifications for licensure.
4. When the review is complete, the ARC shall make a second finding whether the applicant is eligible for licensure. The ARC shall send written notice of this second finding to the applicant with an explanation of the basis for the finding.
5. If the ARC again finds the applicant is ineligible for licensure, an applicant who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act. A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the ARC shall recommend to the Board that licensure be denied and the applicant's file be closed with no recourse to appeal.
6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure.
7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and shall issue an order either to grant or deny licensure.
8. The Board shall send the applicant a copy of the final findings of fact, conclusions of law, and order. An applicant who is denied licensure following a formal administrative hearing is required to exhaust the applicant's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.

C. If the Board receives a complaint against an applicant while the applicant is under review for licensure, the Board shall review the complaint in accordance with the procedures in R4-6-1001. The Board shall not take final action on an application while a complaint is pending against the applicant.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-902. Appeal Process for Licensure Renewal Ineligibility

A. A licensee who applies for licensure renewal may be found ineligible because of failure to meet licensure renewal requirements.

B. If the Board finds an applicant for licensure renewal is ineligible because of failure to meet licensure renewal requirements:

1. The Board shall send a written notice of the finding of ineligibility to the licensee with an explanation of the basis for the finding.
2. A licensee who wishes to appeal the finding of ineligibility for licensure renewal shall submit a written request for an informal review meeting to the Board within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.
3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2),

the Board shall schedule the informal review meeting and provide at least 30-days' notice to the licensee. At the informal review meeting, the Board shall allow the licensee to present additional information regarding the licensee's qualifications for renewal.

4. When the informal review meeting is complete, the Board shall make a second finding whether the licensee meets renewal requirements. The Board shall send written notice of this second finding to the licensee with an explanation of the basis for the finding.
5. If the Board again finds the licensee is ineligible for licensure renewal, a licensee who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.
6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure renewal.
7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and issue an order either to grant or deny licensure renewal.
8. The Board shall send the licensee a copy of the final findings of fact, conclusions of law, and order. A licensee who is denied licensure renewal following a formal administrative hearing is required to exhaust the licensee's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 10. DISCIPLINARY PROCESS

R4-6-1001. Disciplinary Process

A. If the Board receives a written complaint alleging a licensee is or may be incompetent, guilty of unprofessional practice, or mentally or physically unable to engage in the practice of behavioral health safely, the Board shall send written notice of the complaint to the licensee and require the licensee to submit a written response within 30 days from the date of service of the written notice of the complaint.

B. The Board shall conduct all disciplinary proceedings according to A.R.S. §§ 32-3281 and 3282 and Title 41, Chapter 6, Article 10.

C. As provided under A.R.S. § 32-3282(B), a licensee who is the subject of a complaint, or the licensee's designated representative, may review the complaint investigative file at the Board office at least five business days before the meeting at which the Board is scheduled to consider the complaint. The Board may redact confidential information before making the investigative file available to the licensee.

D. If the Board determines that disciplinary action is appropriate, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:

1. Prior disciplinary offenses;
2. Dishonest or self-serving motive;
3. Pattern of misconduct; multiple offenses;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-1002. Review or Rehearing of a Board Decision

A. The Board shall provide for a rehearing or review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and

the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies. A party that has exhausted the party's administrative remedies may apply for judicial review of the final order issued by the Board in accordance with A.R.S. § 12-901 et seq.

C. When a motion for rehearing or review is based on affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

D. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

E. An aggrieved party may seek a review or rehearing of a Board decision by submitting a written request for a review or rehearing to the Board within 30 days after service of the decision. The request shall specify the grounds for a review or rehearing. The Board shall grant a request for a review or rehearing for any of the following reasons materially affecting the rights of an aggrieved party:

1. Irregularity in the administrative proceedings or any abuse of discretion that deprived the aggrieved party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or any party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
5. Excessive penalties;
6. Decision, findings of fact, or conclusions not justified by the evidence or contrary to law; or
7. Errors regarding the admission or rejection of evidence or errors of law that occurred at the hearing or during the progress of the proceedings.

F. The Board may affirm or modify the decision or grant a rehearing to any party on all or part of the issues for any of the reasons listed in subsection (E). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to the matters specified by the Board.

G. No later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason it might have granted relief on motion of a party.

H. If the Board grants a request for rehearing, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.

I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public health, safety, or welfare, and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final order without an opportunity for a rehearing or review.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

ARTICLE 11. STANDARDS OF PRACTICE

R4-6-1101. Consent for Treatment

A licensee shall:

1. Provide treatment to a client only in the context of a professional relationship based on informed consent for treatment;
2. Document in writing for each client the following elements of informed consent for treatment:
   a. Purpose of treatment;
   b. General procedures to be used in treatment, including benefits, limitations, and potential risks;
   c. The client's right to have the client's records and all information regarding the client kept confidential and an explanation of the limitations on confidentiality;
   d. Notification of the licensee's supervision or involvement with a treatment team of professionals;
   e. Methods for the client to obtain information about the client's records;
   f. The client's right to participate in treatment decisions and in the development and periodic review and revision of the client's treatment plan;
   g. The client's right to refuse any recommended treatment or to withdraw consent to treatment and to be advised of the consequences of refusal or withdrawal; and
   h. The client's right to be informed of all fees that the client is required to pay and the licensee's refund and collection policies and procedures; and
3. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative

before providing treatment to the client and when a change occurs in an element listed in subsection (2) that might affect the client's consent for treatment;
4. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative before audio or video taping the client or permitting a third party to observe treatment provided to the client; and
5. Include a dated signature from an authorized representative of the behavioral health entity.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

R4-6-1102. Treatment Plan

A licensee shall:

1. Work jointly with each client or the client's legal representative to prepare an integrated, individualized, written treatment plan, based on the licensee's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of the client that includes:
   a. One or more treatment goals;
   b. One or more treatment methods;
   c. The date when the client's treatment plan will be reviewed;
   d. If a discharge date has been determined, the aftercare needed;
   e. The dated signature of the client or the client's legal representative; and
   f. The dated signature of the licensee;
2. Review and reassess the treatment plan:
   a. According to the review date specified in the treatment plan as required under subsection (1)(c); and
   b. At least annually with the client or the client's legal representative to ensure the continued viability and effectiveness of the treatment plan and, where appropriate, add a description of the services the client may need after terminating treatment with the licensee;
3. Ensure that all treatment plan revisions include the dated signature of the client or the client's legal representative and the licensee;
4. Upon written request, provide a client or the client's legal representative an explanation of all aspects of the client's condition and treatment; and
5. Ensure that a client's treatment is in accordance with the client's treatment plan.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-1103. Client Record

A. A licensee shall ensure that a client record is maintained for each client and:
1. Is protected at all times from loss, damage, or alteration;
2. Is confidential;
3. Is legible and recorded in ink or electronically recorded;
4. Contains entries that are dated and include the printed name and signature or electronic signature of the individual making the entry;
5. Is current and accurate;
6. Contains original documents and original signature, initials, or authentication; and
7. Is disposed of in a manner that protects client confidentiality.

B. A licensee shall ensure that a client record contains the following, if applicable:
1. The client's name, address, and telephone number;
2. Information or records provided by or obtained from another person regarding the client;
3. Written authorization to release the client's record or information;
4. Progress notes;
5. Informed consent to treatment;
6. Contemporaneous documentation of:
   a. Treatment plan and all revisions to the treatment plan;
   b. Requests for client records and resolution of the requests;
   c. Release of any information in the client record;

d. Contact with the client or another individual that relates to the clients health, safety, welfare, or treatment; and
e. Behavioral health services provided to the client;
7. Other information or documentation required by state or federal law.
8. Financial records, including:
a. Records of financial arrangements for the cost of providing behavioral health services;
b. Measures that will be taken for nonpayment of the cost of behavioral health services provided by the licensee.

C. A licensee shall make client records in the licensee's possession promptly available to another health professional and the client or the client's legal representative in accordance with A.R.S. § 12-2293.

D. A licensee shall make client records of a minor client in the licensee's possession promptly available to the minor client's parent in accordance with A.R.S. § 25-403.06.

E. A licensee shall retain records in accordance with A.R.S. § 12-2297.

F. A licensee shall ensure the safety and confidentiality of any client records the licensee creates, maintains, transfers, or destroys whether the records are written, taped, computerized, or stored in any other medium.

G. A licensee shall ensure that a client's privacy and the confidentiality of information provided by the client is maintained by subordinates, including employees, supervisees, clerical assistants, and volunteers.

H. A licensee shall ensure that each progress note includes the following:
1. The date a behavioral health service was provided;
2. The time spent providing the behavioral health service;
3. If counseling services were provided, whether the counseling was individual, couples, family, or group; and
4. The dated signature of the licensee who provided the behavioral health service.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-1104. Financial and Billing Records

A licensee shall:
1. Make financial arrangements with a client or the client's legal representative, third-party payer, or supervisee that are reasonably understandable and conform to accepted billing practices;
2. Before entering a therapeutic relationship, clearly explain to a client or the client's legal representative, all financial arrangements related to professional services, including the use of collection agencies or legal measures for nonpayment;
3. Truthfully represent financial and billing facts to a client or the client's legal representative, third-party payer, or supervisee regarding services rendered; and
4. Maintain billing records, separate from clinical documentation, which correspond with the client record.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-1105. Confidentiality

A. A licensee shall release or disclose client records or any information regarding a client only:
1. In accordance with applicable federal or state law that authorizes release or disclosure; or
2. With written authorization from the client or the client's legal representative.

B. A licensee shall ensure that written authorization for release of client records or any information regarding a client is obtained before a client record or any information regarding a client is released or disclosed unless otherwise allowed by state or federal law.

C. Written authorization includes:
1. The name of the person disclosing the client record or information;
2. The purpose of the disclosure;
3. The individual, agency, or entity requesting or receiving the record or information;
4. A description of the client record or information to be released or disclosed;
5. A statement indicating authorization and understanding that authorization may be revoked at any time;
6. The date or circumstance when the authorization expires, not to exceed 12 months;
7. The date the authorization was signed; and
8. The dated signature of the client or the client's legal representative.

D. A licensee shall ensure that any written authorization to release a client record or any information regarding a client is maintained in the client record.

E. If a licensee provides behavioral health services to multiple members of a family, each legally competent, participating family member shall independently provide written authorization to release client records regarding the family member. Without authorization from a family member, the licensee shall not disclose the family member's client record or any information obtained from the family member.

Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

R4-6-1106. Telepractice

A. Except as otherwise provided by statute, an individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located in Arizona shall be licensed by the Board.

B. Except as otherwise provided by statute, a licensee who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 33, and this Chapter but also the laws and rules of the jurisdiction in which the client is located.

C. An individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice shall:

1. In addition to complying with the requirements in R4-6-1101, document the limitations and risks associated with telepractice, including but not limited to the following;
    a. Inherent confidentiality risks of electronic communication,
    b. Potential for technology failure,
    c. Emergency procedures when the licensee is unavailable, and
    d. Manner of identifying the client when using electronic communication that does not involve video;
2. In addition to complying with the requirements in R4-6-1103, include the following in the progress note required under R4-6-1103(H):
    a. Mode of session, whether interactive audio, video, or electronic communication; and
    b. Verification of the client's:
        i. Physical location during the session; and
        ii. Local emergency contacts.

Historical Note

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 2881, effective January 3, 2021 (Supp. 20-4).

Title 32, Chapter 33, as of October 9, 2024

32-3251. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.

2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.

3. "Direct client contact" means the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients, including through the use of telehealth pursuant to title 36, chapter 36, article 1.

4. "Equivalent" means comparable in content and quality but not identical.

5. "Indirect client service":

(a) Means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision.

(b) Does not include the provision of psychoeducation.

6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

7. "Licensee" means a person who is licensed pursuant to this chapter.

8. "Practice of addiction counseling":

(a) Means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing an addiction that is a persistent, compulsive dependence on a behavior or substance, including mood-altering behaviors or activities known as process addictions, and related problems and to the families of those persons.

(b) Includes the following:

(i) Assessment, appraisal and diagnosis.

(ii) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

9. "Practice of behavioral health" means the practice of marriage and family therapy, practice of professional counseling, practice of social work and practice of addiction counseling pursuant to this chapter.

10. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

11. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:

(a) Facilitate human development and adjustment throughout the human life span.

(b) Assess and facilitate career development.

(c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.

(d) Manage symptoms of mental illness.

(e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.

12. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:

(a) Treat mental, behavioral and emotional disorders.

(b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

(c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.

13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.

14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.

15. "Telehealth" has the same meaning prescribed in section 36-3601.

16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Being convicted of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.

(b) Using fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.

(c) Making any oral or written misrepresentation of a fact:

(i) To secure or attempt to secure the issuance or renewal of a license.

(ii) In any statements provided during an investigation or disciplinary proceeding by the board.

(iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.

(d) Making any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.

(e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.

(f) Engaging in active habitual intemperance in the use of alcohol or active habitual substance abuse.

(g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.

(h) Obtaining a fee by fraud, deceit or misrepresentation.

(i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.

(j) Engaging in conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.

(k) Engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.

(l) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

(m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional education, training or experience.

(n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.

(p) Failing to conform to minimum practice standards as developed by the board.

(q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.

(r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.

(s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.

(t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or allowed by a legally valid written release.

(u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.

(v) Engaging in any sexual conduct between a licensee and a client or former client.

(w) Providing behavioral health services to any person with whom the licensee has had sexual contact.

(x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.

(y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.

(z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.

(aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

(bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.

(cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.

(dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic means in all governmental jurisdictions where the client receiving these services resides.

(ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.

(ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.

(gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.

(hh) Failing to retain records pursuant to section 12-2297.

(ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.

(jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.

(kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative on receipt of proper authorization to do so from the client, the minor client's parent, the client's legal guardian or the client's authorized representative.

(ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.

(mm) Engaging in any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.

(nn) Violating the security of any licensure examination materials.

(oo) Using fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

32-3252. Board of behavioral health examiners; appointment; qualifications; terms; compensation; immunity; training program

A. The board of behavioral health examiners is established consisting of the following members appointed by the governor:

1. The following professional members:

(a) Two members who are licensed in social work pursuant to this chapter, at least one of whom is a licensed clinical social worker.

(b) Two members who are licensed in counseling pursuant to this chapter, at least one of whom is a licensed professional counselor.

(c) Two members who are licensed in marriage and family therapy pursuant to this chapter, at least one of whom is a licensed marriage and family therapist.

(d) Two members who are licensed in addiction counseling pursuant to this chapter, at least one of whom is a licensed independent addiction counselor.

2. Four public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor 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.

C. Each professional board member shall:

1. Be a resident of this state for at least one year before appointment.

2. Be an active licensee in good standing.

3. Have at least five years of experience in an area of behavioral health licensed pursuant to this chapter.

D. Each public board member shall:

1. Be a resident of this state for at least one year before appointment.

2. Be at least twenty-one years of age.

3. Not be licensed or eligible for licensure pursuant to this chapter unless the public member has been retired from active practice for at least five years.

4. Not currently have a substantial financial interest in an entity that directly provides behavioral health services.

5. Not have a household member who is licensed or eligible for licensure pursuant to this chapter unless the household member has been retired from active practice for at least five years.

E. The term of office of board members is three years to begin and end on the third Monday in January. A member shall not serve more than two full consecutive terms.

F. The board shall annually elect a chairman and secretary-treasurer from its membership.

G. Board members are eligible to receive compensation of not more than $85 for each day actually and necessarily spent in the performance of their duties.

H. Board members and personnel are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

I. Each board member must complete a twelve-hour training program that emphasizes responsibilities for administrative management, licensure, judicial processes and temperament within one year after appointment to the board.

32-3253. Powers and duties

A. The board shall:

1. Adopt rules consistent with and necessary or proper to carry out the purposes of this chapter.

2. Administer and enforce this chapter, rules adopted pursuant to this chapter and orders of the board.

3. Issue a license by examination, endorsement or temporary recognition to, and renew the license of, each person who is qualified to be licensed pursuant to this chapter. The board must issue or deny a license within one hundred eighty days after the applicant submits a completed application.

4. Establish fees by rule, except that the board is exempt from the rulemaking requirements of title 41, chapter 6 for the purposes of reducing or eliminating fees.

5. Collect fees and spend monies.

6. Keep a record of all persons who are licensed pursuant to this chapter, actions taken on all applications for licensure, actions involving renewal, suspension, revocation or denial of a license or probation of licensees and the receipt and disbursal of monies.

7. Adopt an official seal for attestation of licensure and other official papers and documents.

8. Conduct investigations and determine on its own motion whether a licensee or an applicant has engaged in unprofessional conduct, is incompetent or is mentally or physically unable to engage in the practice of behavioral health.

9. Conduct disciplinary actions pursuant to this chapter and board rules.

10. Establish and enforce standards or criteria of programs or other mechanisms to ensure the continuing competence of licensees.

11. Establish and enforce compliance with professional standards and rules of conduct for licensees.

12. Engage in a full exchange of information with the licensing and disciplinary boards and professional associations for behavioral health professionals in this state and other jurisdictions.

13. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. 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.

14. Adopt rules regarding the application for and approval of educational curricula of regionally accredited colleges or universities with a program not otherwise accredited by an organization or entity recognized by the board that are consistent with the requirements of this chapter and maintain a list of those programs. Approvals are valid for a period of five years if no changes of curricula are made that are inconsistent with the requirements of this chapter or board rule.

15. Maintain a registry of licensees who have met the educational requirements to provide supervision as required pursuant to this chapter to applicants in the same profession.

16. Adopt rules to allow approval of persons who wish to provide supervision pursuant to this chapter and who are not licensed by the board and who are licensed in a profession other than the profession in which the applicant is seeking licensure.

17. Recognize not more than four hundred hours of psychoeducation for work experience required pursuant to sections 32-3293, 32-3301, 32-3311 and 32-3321.

18. Adopt rules regarding the use of telepractice.

19. If an applicant is required to pass an examination for licensure, allow the applicant to take the examination three times during a twelve-month period.

B. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of behavioral health, protect the health and welfare of the public or assist and facilitate the work of the board.

C. The board may enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency or psychiatric, psychological or behavioral health disorders in a program provided pursuant to subsection D of this section. A licensee who materially fails to comply with a program shall be terminated from the confidential program. Any records of the licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law, notwithstanding any law to the contrary. Stipulated agreements are not public records if the following conditions are met:

1. The licensee voluntarily agrees to participate in the confidential program.

2. The licensee complies with all treatment requirements or recommendations, including participation in approved programs.

3. The licensee refrains from professional practice until the return to practice has been approved by the treatment program and the board.

4. The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.

5. The licensee's professional employer is notified of the licensee's chemical dependency or medical, psychiatric, psychological or behavioral health disorders and participation in the confidential program and is provided a copy of the stipulated agreement.

D. The board shall establish a confidential program for the monitoring of licensees who are chemically dependent or who have psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice and who enroll in a rehabilitation program that meets the criteria prescribed by the board. The licensee is responsible for the costs associated with rehabilitative services and monitoring. The board may take further action if a licensee refuses to enter into a stipulated agreement or fails to comply with the terms of a stipulated agreement. In order to protect the public health and safety, the confidentiality requirements of this subsection do not apply if a licensee does not comply with the stipulated agreement.

E. The board shall audio record all meetings and maintain all audio and video recordings or stenographic records of interviews and meetings for a period of three years from when the record was created.

32-3254. Board of behavioral health examiners fund

(L24, Ch. 222, sec. 41. Eff. until 7/1/28)

A. The board of behavioral health examiners fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit fifteen percent of all monies received by the board in the state general fund and deposit the remaining eighty-five percent in the board of behavioral health examiners fund.

B. All monies deposited in the board of behavioral health examiners fund are subject to section 35-143.01.

32-3255. Executive director; compensation; duties

A. On or after January 31, 2014 and subject to title 41, chapter 4, article 4, the board shall appoint an executive director who shall serve at the pleasure of the board. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

B. The executive director shall:

1. Perform the administrative duties of the board.

2. Subject to title 41, chapter 4, article 4, employ personnel as the executive director deems necessary, including professional consultants and agents necessary to conduct investigations. An investigator must complete a nationally recognized investigator training program within one year after the date of hire. Until the investigator completes this training program, the investigator must work under the supervision of an investigator who has completed a training program.

32-3256. Executive director; complaints; dismissal; review

A. If delegated by the board, the executive director may dismiss a complaint if the investigative staff's review indicates that the complaint is without merit and that dismissal is appropriate.

B. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director dismissed pursuant to subsection A of this section since the last board meeting.

C. A person who is aggrieved by an action taken by the executive director pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty-five days after that person is provided written notification of the executive director's action. At the next regular board meeting, the board shall review the executive director's action and, on review, shall approve, modify or reject the executive director's action.

32-3257. Written notifications and communications; methods of transmission

For the purposes of this chapter, notifications or communications required to be written or in writing may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and shall not be transmitted or received orally.

32-3261. Academic review committees; members; appointment; qualifications; terms; compensation; immunity; training

A. The board shall establish an academic review committee for each professional area licensed pursuant to this chapter to do the following:

1. Review applications referred to the committee by the board or the executive director to determine whether an applicant, whose curriculum has not been approved pursuant to section 32-3253, subsection A, paragraph 14 or whose program is not accredited by an organization or entity approved by the board, has met the educational requirements of this chapter or board rules.

2. On referral by the executive director, make recommendations to the board regarding whether an applicant has met the requirements of supervised work experience required for licensure pursuant to this chapter or board rules.

3. Make specific findings concerning an application's deficiencies.

4. Review applications and make recommendations to the board for curriculum approval applications made pursuant to section 32-3253, subsection A, paragraph 14.

5. At the request of the board, make recommendations regarding examinations required pursuant to this chapter.

6. Review applications for and make determinations regarding exemptions related to clinical supervision requirements.

B. If an application is referred to an academic review committee for review and the academic review committee finds that additional information is needed from the applicant, the academic review committee shall provide a comprehensive written request for additional information to the applicant.

C. An academic review committee shall be composed of three members who have been residents of this state for at least one year before appointment, at least one of whom is licensed in the professional area

pursuant to this chapter and have five years of experience in the applicable profession. At least one member must have served within the previous ten years as core or full-time faculty at a regionally accredited college or university in a program related to the applicable profession and have experience in the design and development of the curriculum of a related program. If qualified, a faculty member may serve on more than one academic review committee. A board member may not be appointed to serve on an academic review committee.

D. Committee members shall initially be appointed by the board. From and after January 1, 2016, the governor shall appoint the committee members. A committee member who is initially appointed by the board may be reappointed by the governor. A committee member who is initially appointed by the board shall continue to serve until appointed or replaced by the governor.

E. Committee members serve at the pleasure of the governor for terms of three years. A member shall not serve more than two full consecutive terms.

F. Committee members are eligible to receive compensation of not more than eighty-five dollars for each day actually and necessarily spent in the performance of their duties.

G. An academic review committee shall annually elect a chairman and secretary from its membership.

H. Committee members are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

I. Committee members shall receive at least five hours of training as prescribed by the board within one year after the member is initially appointed and that includes instruction in ethics and open meeting requirements.

32-3271. Exceptions to licensure; jurisdiction

A. This chapter does not apply to:

1. A person who is currently licensed, certified or regulated pursuant to another chapter of this title and who provides services within the person's scope of practice if the person does not claim to be licensed pursuant to this chapter.

2. A person who is not a resident of this state if the person:

(a) Performs behavioral health services in this state for not more than ninety days in any one calendar year as prescribed by board rule.

(b) Is authorized to perform these services pursuant to the laws of the state or country in which the person resides or pursuant to the laws of a federally recognized Indian tribe.

(c) Informs the client of the limited nature of these services and that the person is not licensed in this state.

3. A rabbi, priest, minister or member of the clergy of any religious denomination or sect if the activities and services that person performs are within the scope of the performance of the regular or specialized ministerial duties of an established and legally recognizable church, denomination or sect and the person performing the services remains accountable to the established authority of the church, denomination or sect.

4. A member-run self-help or self-growth group if no member of the group receives direct or indirect financial compensation.

5. A behavioral health technician or behavioral health paraprofessional who is employed by an agency licensed by the department of health services.

6. A person contracting with the supreme court or a person employed by or contracting with an agency under contract with the supreme court who is otherwise ineligible to be licensed or who is in the process

of applying to be licensed under this chapter as long as that person is in compliance with the supreme court contract conditions regarding professional counseling services and practices only under supervision.

7. A person who is employed by the department of economic security or the department of child safety and who practices social work, marriage and family therapy, addiction counseling, counseling and case management within the scope of the person's job duties and under direct supervision by the employer department.

8. A student, intern or trainee who is pursuing a course of study in social work, counseling, marriage and family therapy, addiction counseling or case management in a regionally accredited institution of higher education or training institution if the person's activities are performed under qualified supervision and are part of the person's supervised course of study.

9. A person who is practicing social work, counseling and case management and who is employed by an agency licensed by the department of economic security or the department of child safety.

10. A paraprofessional who is employed by the department of economic security or by an agency licensed by the department of economic security.

11. A Christian Science practitioner if all of the following are true:

(a) The person is not providing psychotherapy.

(b) The activities and services the person performs are within the scope of the performance of the regular or specialized duties of a Christian Science practitioner.

(c) The person remains accountable to the established authority of the practitioner's church.

12. A person who is not providing psychotherapy.

B. A person who provides services pursuant to subsection A, paragraph 2 of this section is deemed to have agreed to the jurisdiction of the board and to be bound by the laws of this state.

32-3272. Fees

A. For issuance of a license pursuant to this chapter, including application fees, the board shall establish and charge reasonable fees not to exceed $500.

B. For renewal of a license pursuant to this chapter, the board shall establish and charge reasonable fees not to exceed $500. The board shall not increase fees pursuant to this subsection more than $25 each year.

C. The board by rule may adopt a fee for applications for approval of educational curricula pursuant to section 32-3253, subsection A, paragraph 14.

D. The board shall establish fees to produce monies that approximate the cost of maintaining the board.

E. The board shall waive the application fee for an independent level license if an applicant has paid the fee for an initial or renewal associate level license in this state and within ninety days after payment of the fee the applicant applies for an independent level license.

F. The board shall waive the renewal fee for an associate level license if the licensee has submitted the renewal application and the licensee's application for independent licensure is pending at the time of renewal.

32-3273. License renewal; continuing education

A. Except as provided in section 32-4301, a license issued pursuant to this chapter is renewable every two years by paying the renewal fee prescribed by the board and submitting documentation prescribed by the board by rule of completion of relevant continuing education experience as determined by the board during the previous twenty-four-month period.

B. The board shall send notice in writing of required relevant continuing education experience to each licensee at least ninety days before the renewal date.

C. A licensee must satisfy the continuing education requirements that are prescribed by the board by rule and that are designed to provide the necessary understanding of ethics, cultural competency, current developments, skills, procedures and treatments related to behavioral health and to ensure the continuing competence of licensees. The board shall adopt rules to prescribe the manner of documenting compliance with this subsection.

D. At the request of a licensee who has been issued two or more licenses, the board shall establish the same renewal dates for those licenses. The board may prorate any fees due as necessary to synchronize the dates.

32-3274. Licensure by endorsement

A. The board may issue a license by endorsement to a person in that person's behavioral health discipline if the person is licensed or certified by the regulatory agency of one or more other states or federal jurisdictions at a substantially equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Is currently licensed or certified in behavioral health by the regulatory agency of one or more other states or federal jurisdictions and each license or certification is current and in good standing.

2. Has been licensed or certified for at least one year in one or more other states or federal jurisdictions in the discipline and practice level for which an application is submitted. The practice level of the jurisdictions must be substantially equivalent, as determined by the board, to the practice level for which the application is submitted.

3. Meets the basic requirements for licensure prescribed by section 32-3275.

4. Submits to the board all of the following:

(a) A listing of every jurisdiction in the United States in which the person has been licensed or certified in the practice of behavioral health and any disciplinary action taken by any regulatory agency or any instance in which a license has been surrendered in lieu of discipline.

(b) Verification of licensure or certification from every jurisdiction in which the person is licensed or certified for the discipline and practice level for which the person applies.

(c) Any other procedural application requirements adopted by the board in rule.

B. In addition to the requirements of subsection A of this section, a person seeking license by endorsement for the following practice levels must have earned a master's or higher degree in the applicable field of practice granted by a regionally accredited college or university:

1. Licensed clinical social worker.

2. Licensed professional counselor.

3. Licensed marriage and family therapist.

4. Licensed independent addiction counselor.

C. Except for licenses by endorsement issued in the practice levels prescribed in subsection B of this section, a person who is issued a license pursuant to this section shall practice behavioral health only under the direct supervision of a licensee.

D. The board by rule may prescribe a procedure to issue licenses pursuant to this section.

32-3275. Requirements for licensure; withdrawal of application

A. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.

2. Be at least twenty-one years of age.

3. Pay all applicable fees prescribed by the board.

4. Have the physical and mental capability to safely and competently engage in the practice of behavioral health.

5. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this chapter.

6. Not have had a professional license or certificate refused, revoked, suspended or restricted by this state or any other regulatory jurisdiction in the United States or any other country for reasons that relate to unprofessional conduct.

7. Not have voluntarily surrendered a professional license or certificate in this state or another regulatory jurisdiction in the United States or any other country while under investigation for conduct that relates to unprofessional conduct.

8. Not have a complaint, allegation or investigation pending before the board or another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaint, allegation or investigation pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

B. Before the board considers denial of a license based on a deficiency pursuant to subsection A, paragraph 4, 5, 6 or 7 of this section, the applicant shall be given thirty-five days' notice of the time and place of a meeting at which the applicant may provide in person, by counsel or in written form information and evidence related to any deficiency relating to subsection A, paragraph 4, 5, 6 or 7 of this section, including any evidence that the deficiency has been corrected or monitored or that a mitigating circumstance exists. In any notice of denial, the board shall provide notice of the applicant's right to a hearing pursuant to title 41, chapter 6, article 10.

C. If the board finds that an applicant is subject to subsection A, paragraphs 4, 5, 6 or 7 of this section, the board may determine to its satisfaction that the conduct or condition has been corrected, monitored and resolved and may issue a license. If the conduct or condition has not been resolved, the board may determine to its satisfaction that mitigating circumstances exist that prevent its resolution and may issue a license.

D. An applicant for licensure may withdraw the application unless the board has sent to the applicant notification that the board has initiated an investigation concerning professional misconduct. Following that notification, the applicant may request that the board review the applicant's request to withdraw the application. In considering the request the board shall determine whether it is probable that the investigation would result in an adverse action against the applicant.

E. After a final board order of denial has been issued, the board shall report the denial if required by the health care quality improvement act of 1986 (42 United States Code chapter 117). For the purposes of this subsection and except as required by federal law, "final board order" means:

1. For an applicant who seeks a hearing pursuant to title 41, chapter 6, article 10, when a final administrative decision has been made.

2. For an applicant who does not timely file a notice of appeal, after the time for the filing expires pursuant to section 41-1092.03.

32-3276. Notice of address and telephone number changes; penalties

A. A licensee must provide the board with the licensee's current home address and telephone number and office address and telephone number and promptly and in writing inform the board of any change in this information.

B. The board may assess the costs it incurs in locating a licensee and impose a penalty of not to exceed one hundred dollars against a licensee who does not notify the board pursuant to subsection A of this section within thirty days after the change of address or telephone number.

32-3277. Expired licenses; reinstatement

A. A person who does not renew a license is ineligible to practice pursuant to this chapter.

B. The board may reinstate an expired license if the person submits an application for reinstatement within ninety days after the expiration of the license. The application must document to the board's satisfaction that the applicant has met the renewal requirements prescribed by this chapter and include a late renewal penalty prescribed by the board by rule.

32-3278. Inactive license

A. The board by rule may establish procedures for a licensee to delay renewal of the license for good cause and to place the licensee on inactive status. A person on inactive status shall not practice behavioral health or claim to be a licensee.

B. A licensee on inactive status may request reinstatement of the license to active status by submitting a license renewal application.

32-3279. Probationary and temporary licenses

A. If an applicant does not meet the basic requirements for licensure prescribed in section 32-3275, the board may issue a probationary license that is subject to any of the following:

1. A requirement that the licensee's practice be supervised.

2. A restriction on the licensee's practice.

3. A requirement that the licensee begin or continue medical or psychiatric treatment.

4. A requirement that the licensee participate in a specified rehabilitation program.

5. A requirement that the licensee abstain from alcohol and other drugs.

B. If the board offers a probationary license, the board shall notify the applicant in writing of the:

1. Applicant's specific deficiencies.

2. Probationary period.

3. Applicant's right to reject the terms of probation.

4. Applicant's right to a hearing on the board's denial of the application.

C. The board by rule may prescribe a procedure to issue temporary licenses. At a minimum, these rules must include the following provisions:

1. A person issued a temporary license may practice behavioral health only under the direct supervision of a licensee.

2. A temporary license expires on the date specified by the board and not more than one year after the date of issuance.

3. A temporary license may contain restrictions as to time, place and supervision that the board deems appropriate.

4. The board may summarily revoke a temporary license without a hearing.

5. The board's denial of a licensure application terminates a temporary license.

32-3280. Fingerprinting

A. An applicant for licensure under this article other than for a temporary license must submit a full set of fingerprints to the board, at the applicant's own expense, 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 board shall waive the records check required in subsection A of this section for an applicant who provides evidence acceptable to the board that the applicant holds a valid fingerprint clearance card issued by the department of public safety.

32-3281. Disciplinary action; investigations; hearings; civil penalty; timely complaints; burden of proof

A. The board, on its own motion or on a complaint, may investigate any evidence that appears to show that a licensee is or may be incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of behavioral health. A motion by the board to initiate an investigation shall be made at an open and properly noticed board meeting and shall include the basis on which the investigation is being initiated and the name of the board member making the motion. The board's vote on the motion to initiate an investigation shall be recorded. As part of its investigation, the board may hold an investigational meeting pursuant to this chapter. Any person may, and a licensee and any entity licensed by the department of health services shall, report to the board any information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any licensee to fail to report as required by this section. The board shall report to the department of health services any entity licensed by the department of health services that fails to report as required by this section. For complaints related to conduct that is inconsistent with professional standards or ethics, scope of practice or standard of care, the board may consult with one or more licensed or retired behavioral health professionals of the same profession as the licensee to review complaints and make recommendations to the board.

B. On determination of reasonable cause, the board shall require, at the licensee's own expense, any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the licensee's competence or ability to safely engage in the practice of behavioral health and conduct necessary investigations, including investigational interviews between representatives of the board and the licensee, to fully inform the board with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing. The board may require the licensee, at the licensee's expense, to undergo assessment by a rehabilitative, retraining or assessment program approved by the board.

C. If the board finds, based on the information received pursuant to subsection A or B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it must also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

D. If after completing an investigation the board finds that the information provided is not of sufficient seriousness to merit disciplinary action against the licensee, the board shall either:

1. Dismiss the complaint if, in the opinion of the board, the complaint is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. A complaint dismissed by the board pursuant to subsection D, paragraph 1 of this section is not a complaint of unprofessional conduct and shall not be disclosed by the board as a complaint on the licensee's complaint history.

F. If after completing its investigation the board believes that the information is or may be true, the board may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavioral health. A consent agreement may also require the licensee to successfully complete a board approved rehabilitative, retraining or assessment program.

G. If the board finds that the information provided pursuant to subsection A of this section is or may be true, the board may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, the board may order a summary suspension of the licensee's license pending formal revocation proceedings or other action authorized by this section.

H. If after completing the formal interview the board finds the information provided is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a decree of censure. A decree of censure is an official action against the licensee's license and may include a requirement for restitution of fees to a client resulting from violations of this chapter or rules adopted pursuant to this chapter.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the terms of probation or a consent agreement.

5. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

I. If the board finds that the information provided in subsection A or G of this section warrants suspension or revocation of a license issued under this chapter, the board shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

J. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

K. A letter of concern is a public document.

L. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.

M. If the board during the course of any investigation determines that a criminal violation may have occurred involving the delivery of behavioral health services, the board shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

N. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

O. Notice of a complaint and hearing is effective by a true copy of the notice being sent by certified mail to the licensee's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail.

P. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Q. The board may defer action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing to practice restrictions and treatment and monitoring programs deemed necessary by the board to protect the public health and safety. A licensee who is impaired and who does not agree to enter into an agreement with the board is subject to other action as provided pursuant to this chapter.

R. Subject to an order duly entered by the board, a person whose license to practice behavioral health has been suspended or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals apply to the board for reinstatement of the license. The person shall submit the application in writing and in the form prescribed by the board. After conducting an investigation and hearing, the board may grant or deny the application or modify the original finding to reflect any circumstances that have changed sufficiently to warrant modification. The board may require the applicant to pass an examination or complete board imposed continuing education requirements or may impose any other sanctions the board deems appropriate for reentry into the practice of behavioral health.

S. A person whose license is revoked, suspended or not renewed must return the license to the offices of the board within ten days after notice of that action.

T. The board may enforce a civil penalty imposed pursuant to this section in the superior court in Maricopa county.

U. For complaints being brought before the full board, the information released to the public regarding an ongoing investigation must clearly indicate that the investigation is a pending complaint and must include the following statement:

Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit or not of sufficient seriousness to merit disciplinary action against the licensee and are dismissed.

V. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:

1. Malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

W. The board shall not open an investigation if identifying information regarding the complainant is not provided.

X. Except for disciplinary matters prescribed by section 32-3251, paragraph 16, subdivision (v), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-3282. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; confidentiality

A. In connection with information received pursuant to section 32-3281, subsection A, the board or the board's authorized agents or employees at all reasonable times have access to, for the purpose of examination, and the right to copy any psychotherapy notes, documents, reports, records or other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or health care institution as defined in section 36-401 or any other public or private agency, if the psychotherapy notes, documents, reports, records or evidence relate to the specific complaint.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents or any other physical evidence if the evidence relates to the unauthorized practice of behavioral health or to the competence, unprofessional conduct or mental or physical ability of a licensee to safely practice. Within five days after the service of a subpoena on any person requiring the production of any evidence in that person's possession or under that person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify a subpoena if in its opinion the evidence required does not relate to unlawful practices covered by this chapter or is not relevant to the charge that is the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any member of the board and any agent designated by the board may administer oaths, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.

3. The board shall make available to the licensee who is the subject of the investigation, or the licensee's designated representative, for inspection at the board's office the investigative file at least five business days before a board meeting at which the board considers the complaint. The board may redact any confidential information before releasing the file to the licensee.

4. The superior court, on application by the board or by the person subpoenaed, has jurisdiction to issue an order either:

(a) Requiring the person to appear before the board or the board's authorized agent to produce evidence relating to the matter under investigation.

(b) Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter or is not relevant to grounds for disciplinary action that are the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any failure to obey an order of the court may be punished by the court as contempt.

C. Records, including clinical records, reports, files or other reports or oral statements relating to examinations, findings or treatments of clients, any information from which a client or the client's family might be identified or information received and records kept by the board as a result of the investigation procedure prescribed by this chapter are not available to the public.

D. This section and any other law that makes communications between a licensee and the licensee's client a privileged communication do not apply to investigations or proceedings conducted pursuant to this chapter. The board and and the board's employees, agents and representatives shall keep in confidence the names of any clients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

32-3283. Confidential relationship; privileged communications; clients with legal guardians; treatment decisions

A. The confidential relationship between a client and a licensee, including a temporary licensee, is the same as between an attorney and a client. Unless a client waives this privilege in writing or in court testimony, a licensee shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavioral health professional-client relationship.

B. A licensee shall divulge to the board information the board requires in connection with any investigation, public hearing or other proceeding.

C. The behavioral health professional-client privilege does not extend to cases in which the behavioral health professional has a duty to:

1. Inform victims and appropriate authorities that a client's condition indicates a clear and imminent danger to the client or others pursuant to this chapter.

2. Report information as required by law.

D. A client's legal guardian may make treatment decisions on behalf of the client, except that the client receiving services is the decision maker for issues:

1. That directly affect the client's physical or emotional safety, such as sexual or other exploitative relationships.

2. That the guardian agrees to specifically reserve to the client.

3. Where the right to seek behavioral health services without parental or guardian consent is established by state or federal law.

32-3284. Cease and desist orders; injunctions

A. The board may issue a cease and desist order or request that an injunction be issued by the superior court to stop a person from engaging in the unauthorized practice of behavioral health or from violating or threatening to violate a statute, rule or order that the board has issued or is empowered to enforce. If the board seeks an injunction to stop the unauthorized practice of behavioral health, it is sufficient to charge that the respondent on a day certain in a named county engaged in the practice of behavioral health without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under applicable procedures prescribed in title 41, chapter 6, article 10.

B. Violation of an injunction shall be punished as for contempt of court.

32-3285. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-3286. Unlawful practice; unlawful use of title; violations; classification; civil penalty; exception

A. Except as prescribed in section 32-3271, a person who is not licensed pursuant to this chapter shall not engage in the practice of behavioral health.

B. A person who is not licensed pursuant to this chapter shall not use any of the following designations or any other designation that indicates licensure status, including abbreviations, or claim to be licensed pursuant to this chapter:

1. Licensed professional counselor.

2. Licensed associate counselor.

3. Licensed marriage and family therapist.

4. Licensed associate marriage and family therapist.

5. Licensed clinical social worker.

6. Licensed master social worker.

7. Licensed baccalaureate social worker.

8. Licensed independent addiction counselor.

9. Licensed associate addiction counselor.

10. Licensed addiction technician.

C. A person who is not licensed pursuant to this chapter and who practices or attempts to practice or who holds himself out as being trained and authorized to practice behavioral health, including diagnosing or treating any mental ailment, disease or disorder or other mental condition of any person, without being authorized by law to perform the act is engaging in the unauthorized practice of behavioral health, is in violation of this chapter, is guilty of a class 6 felony and is subject to a civil penalty of not more than $500 for each offense.

D. A person who conspires with or aids and abets another to commit any act described in subsection C of this section is guilty of a class 6 felony and is subject to a civil penalty of not more than $500 for each offense.

E. The board shall notify the department of health services if a licensed health care institution employs or contracts with a person who is investigated pursuant to this section.

F. Each day that a violation is committed constitutes a separate offense.

G. All fees received for services described in this section shall be refunded by the person found guilty pursuant to this section.

H. Notwithstanding subsection A of this section and based on circumstances presented to the board, the board may sanction a person's failure to timely renew a license while continuing to engage in the practice of behavioral health as an administrative violation rather than as a violation of this section or grounds for unprofessional conduct and may impose a civil penalty of not more than $500. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the state general fund.

32-3291. Licensed baccalaureate social worker; licensure; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed baccalaureate social worker shall:

1. Furnish documentation as prescribed by the board by rule that the person has earned a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

2. Pass an examination approved by the board.

B. A licensed baccalaureate social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

32-3292. Licensed master social worker; licensure; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed master social worker shall:

1. Furnish documentation satisfactory to the board that the person has earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

2. Pass an examination approved by the board.

B. A licensed master social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

32-3293. Licensed clinical social worker; licensure; qualifications

A person who wishes to be licensed by the board to engage in the practice of social work as a licensed clinical social worker shall:

1. Furnish documentation as prescribed by the board by rule that the person has:

(a) Earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

(b) Received at least twenty-four months of post-master's degree experience in the practice of clinical social work under supervision that includes at least one thousand six hundred hours of direct client contact that meets the requirements prescribed by the board by rule. For clinical supervision, at least one hundred hours of experience must be as prescribed by the board by rule. For direct client contact hours, not more than four hundred hours may be in psychoeducation.

2. Provide documentation on a board-approved form completed by the person's supervisor attesting that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

3. Pass an examination approved by the board.

32-3295. Social work licensure compact

SECTION 1. PURPOSE

A. The purpose of this compact is to facilitate interstate practice of regulated social workers by improving public access to competent social work services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

B. This compact is designed to achieve the following objectives:

1. Increase public access to social work services.

2. Reduce overly burdensome and duplicative requirements associated with holding multiple licenses.

3. Enhance the member states' ability to protect the public's health and safety.

4. Encourage the cooperation of member states in regulating multistate practice.

5. Promote mobility and address workforce shortages by eliminating the necessity for licenses in multiple states by providing for the mutual recognition of other member state licenses.

6. Support military families.

7. Facilitate the exchange of licensure and disciplinary information among member states.

8. Authorize all member states to hold a regulated social worker accountable for abiding by a member state's laws, regulations and applicable professional standards in the member state in which the client is located at the time care is rendered.

9. Allow for the use of telehealth to facilitate increased access to regulated social work services.

SECTION 2. DEFINITIONS

In this compact, unless the context otherwise requires:

1. "Active military member" means any individual with full-time duty status in the active armed forces of the United States, including members of the national guard and reserve.

2. "Adverse action" means any administrative, civil, equitable or criminal action allowed by a state's laws that is imposed by a licensing authority or other authority against a regulated social worker, including actions against an individual's license or multistate authorization to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice or any other encumbrance on licensure affecting a regulated social worker's authorization to practice, including issuance of a cease and desist action.

3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a licensing authority to address practitioners with an impairment.

4. "Charter member states" means member states that have enacted legislation to adopt this compact if the legislation predates the effective date of this compact as described in section 14 of this compact.

5. "Compact commission" or "commission" means the government agency whose membership consists of all states that have enacted this compact, that is known as the social work licensure compact commission as described in section 10 of this compact and that operates as an instrumentality of the member states.

6. "Current significant investigative information" means either:

(a) Investigative information that a licensing authority, after a preliminary inquiry that includes notification and an opportunity for the regulated social worker to respond, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction as may be defined by the commission.

(b) Investigative information that indicates that the regulated social worker represents an immediate threat to public health and safety, as defined by the commission, regardless of whether the regulated social worker has been notified and has had an opportunity to respond.

7. "Data system" means a repository of information about licensees, including continuing education, examination, licensure, current significant investigative information, disqualifying events, multistate licenses and adverse action information or other information as required by the commission.

8. "Disqualifying event" means any adverse action or incident that results in an encumbrance that disqualifies or makes the licensee ineligible to either obtain, retain or renew a multistate license.

9. "Domicile" means the jurisdiction in which the licensee resides and intends to remain indefinitely.

10. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of social work licensed and regulated by a licensing authority.

11. "Executive committee" means a group of delegates elected or appointed to act on behalf of, and within the powers granted to them by, the compact and commission.

12. "Home state" means the member state that is the licensee's primary domicile.

13. "Impairment":

(a) Means a conditions or conditions that may impair a practitioner's ability to engage in full and unrestricted practice as a regulated social worker without some type of intervention.

(b) May include alcohol and drug dependence, mental health impairment and neurological or physical impairments.

14. "Licensees" means an individual who currently holds a license from a state to practice as a regulated social worker.

15. "Licensing authority" means the board or agency of a member state, or equivalent, that is responsible for licensing and regulating regulated social workers.

16. "Member state" means a state, commonwealth, district or territory of the United States of America that has enacted this compact.

17. "Multistate authorization to practice" means a legally authorized privilege to practice that is equivalent to a license and that is associated with a multistate license permitting the practice of social work in a remote state.

18. "Multistate license" means a license to practice as a regulated social worker issued by a home state licensing authority that authorizes the regulated social worker to practice in all member states under multistate authorization to practice.

19. "Qualifying national exam" means a national licensing examination approved by the commission.

20. "Regulated social worker" means any clinical, master's or bachelor's social worker who is licensed by a member state regardless of the title used by that member state.

21. "Remote state" means a member state other than the licensee's home state.

22. "Rule" or "rule of the commission" means a regulation duly promulgated by the commission, as authorized by the compact, that has the force of law.

23. "Single state license":

(a) Means a social work license issued by any state that authorizes practice only within the issuing state.

(b) Does not include multistate authorization to practice in any member state.

24. "Social work" or "social work services" means the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities through the care and services provided by a regulated social worker as set forth in the member state's statutes and regulations in the state where the services are being provided.

25. "State" means any state, commonwealth, district or territory of the United States of America that regulates the practice of social work.

26. "Unencumbered license" means a license that authorizes a regulated social worker to engage in the full and unrestricted practice of social work.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To be eligible to participate in the compact, a potential member state must currently meet all of the following criteria:

1. License and regulate the practice of social work at either the clinical, master's or bachelor's category.

2. Require applicants for licensure to graduate from a program that:

(a) Is operated by a college or university recognized by the licensing authority.

(b) Is accredited, or in candidacy by an institution that subsequently becomes accredited, by an accrediting agency recognized by either:

(i) The council for higher education accreditation, or its successor.

(ii) The United States department of education; and

(c) Corresponds to the licensure sought as outlined in section 4 of this compact.

3. Require applicants for clinical licensure to complete a period of supervised practice.

4. Have a mechanism in place for receiving, investigating and adjudicating complaints about licensees.

B. To maintain membership in the compact, a member state shall do all of the following:

1. Require that applicants for a multistate license pass a qualifying national exam for the corresponding category of multistate license sought as outlined in section 4 of this compact.

2. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules.

3. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of current significant investigative information regarding a licensee.

4. Implement procedures for considering the criminal history records of applicants for a multistate license. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

5. Comply with the rules of the commission.

6. Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable home state laws.

7. Authorize a licensee holding a multistate license in any member state to practice in accordance with the terms of the compact and rules of the commission.

8. Designate a delegate to participate in the commission meetings.

C. A member state that meets the requirements of subsections A and B of this section shall designate the categories of social work licensure that are eligible for issuance of a multistate license for applicants in such member state. To the extent that any member state does not meet the requirements for participation in the compact at any particular category of social work licensure, such member state may choose, but is not obligated, to issue a multistate license to applicants who otherwise meet the requirements of section 4 of this compact for issuance of a multistate license in such category or categories of licensure.

D. The home state may charge a fee for granting the multistate license.

SECTION 4. SOCIAL WORKER PARTICIPATION IN THE COMPACT

A. To be eligible for a multistate license under the terms and provisions of this compact, an applicant, regardless of category must:

1. Hold or be eligible for an active, unencumbered license in the home state.

2. Pay any applicable fees, including any state fee, for the multistate license.

3. Submit, in connection with an application for a multistate license, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

4. Notify the home state of any adverse action, encumbrance or restriction on any professional license taken by any member state or nonmember state within thirty days after the date the action is taken.

5. Meet any continuing competence requirements established by the home state.

6. Abide by the laws, regulations and applicable standards in the member state where the client is located at the time care is rendered.

B. An applicant for a clinical-category multistate license must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

(a) Passage of a clinical-category qualifying national exam.

(b) Licensure of the applicant in the applicant's home state at the clinical category, beginning prior to such time as a qualifying national exam was required by the home state and accompanied by a period of continuous social work licensure thereafter, all of which may be further governed by the rules of the commission.

(c) The substantial equivalency of the foregoing competency requirements, which the commission may determine by rule.

2. Attain at least a master's degree in social work from a program that is both:

(a) Operated by a college or university recognized by the licensing authority.

(b) Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

(i) The council for higher education accreditation, or its successor.

(ii) The United States department of education.

3. Fulfill a practice requirement, which shall be satisfied by demonstrating completion of either:

(a) A period of postgraduate supervised clinical practice equal to a minimum of three thousand hours.

(b) A minimum of two years of full-time postgraduate supervised clinical practice.

(c) The substantial equivalency of the foregoing practice requirements, which the commission may determine by rule.

C. An applicant for a master's-category multistate license must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

(a) Passage of a masters-category qualifying national exam.

(b) Licensure of the applicant in the applicant's home state at the master's category, beginning prior to such time as a qualifying national exam was required by the home state at the master's category and accompanied by a continuous period of social work licensure thereafter, all of which may be further governed by the rules of the commission.

(c) The substantial equivalency of the foregoing competency requirements, which the commission may determine by rule.

2. Attain at least a master's degree in social work from a program that is both:

(a) Operated by a college or university recognized by the licensing authority.

(b) Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

(i) The council for higher education accreditation, or its successor.

(ii) The United States department of education.

D. An applicant for a bachelor's-category multistate license must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

(a) Passage of a bachelor's-category qualifying national exam.

(b) Licensure of the applicant in the applicant's home state at the bachelor's category, beginning prior to such time as a qualifying national exam was required by the home state and accompanied by a period of continuous social work licensure thereafter, all of which may be further governed by the rules of the commission.

(c) The substantial equivalency of the foregoing competency requirements, which the commission may determine by rule.

2. Attain at least a bachelor's degree in social work from a program that is both:

(a) Operated by a college or university recognized by the licensing authority.

(b) Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

(i) The council for higher education accreditation, or its successor.

(ii) The United States department of education.

E. The multistate license for a regulated social worker is subject to the renewal requirements of the home state. The regulated social worker must maintain compliance with the requirements of subsection A of this section to be eligible to renew a multistate license.

F. The regulated social worker's services in a remote state are subject to that member state's regulatory authority. A remote state may, in accordance with due process and that member state's laws, remove a regulated social worker's multistate authorization to practice in the remote state for a specific period of time, impose fines and take any other necessary actions to protect the health and safety of its citizens.

G. If a multistate license is encumbered, the regulated social worker's multistate authorization to practice shall be deactivated in all remote states until the multistate license is no longer encumbered.

H. If a multistate authorization to practice is encumbered in a remote state, the regulated social worker's multistate authorization to practice may be deactivated in that state until the multistate authorization to practice is no longer encumbered.

SECTION 5. ISSUANCE OF A MULTISTATE LICENSE

A. On receipt of an application for multistate license, the home state licensing authority shall determine the applicant's eligibility for a multistate license in accordance with section 4 of this compact.

B. If such applicant is eligible pursuant to section 4 of this compact, the home state licensing authority shall issue a multistate license that authorizes the applicant or regulated social worker to practice in all member states under a multistate authorization to practice.

C. On issuance of a multistate license, the home state licensing authority shall designate whether the regulated social worker holds a multistate license in the bachelor's, master's or clinical category of social work.

D. A multistate license issued by a home state to a resident in that state shall be recognized by all compact member states as authorizing social work practice under a multistate authorization to practice corresponding to each category of licensure regulated in each member state.

SECTION 6. AUTHORITY OF INTERSTATE COMPACT COMMISSION AND MEMBER STATE LICENSING AUTHORITIES

A. This compact and any rule of the commission does not limit, restrict or in any way reduce the ability of a member state to enact and enforce laws, regulations or other rules related to the practice of social work in that state if those laws, regulations or other rules are not inconsistent with the provisions of this compact.

B. This compact does not affect the requirements established by a member state for the issuance of a single state license.

C. This compact and any rule of the commission does not limit, restrict or in any way reduce the ability of a member state to take adverse action against a licensee's single state license to practice social work in that state.

D. This compact and any rule of the commission does not limit, restrict or in any way reduce the ability of a remote state to take adverse action against a licensee's multistate authorization to practice in that state.

E. This compact and any rule of the commission does not limit, restrict or in any way reduce the ability of a licensee's home state to take adverse action against a licensee's multistate license based on information provided by a remote state.

SECTION 7. REISSUANCE OF A MULTISTATE LICENSE BY A NEW HOME STATE

A. A licensee can hold a multistate license issued by the licensee's home state in only one member state at any given time.

B. If a licensee changes the licensee's home state by moving between two member states:

1. The licensee shall immediately apply for the reissuance of the licensee's multistate license in the new home state. The licensee shall pay all applicable fees and notify the prior home state in accordance with the rules of the commission.

2. On receipt of an application to reissue a multistate license, the new home state shall verify that the multistate license is active, unencumbered and eligible for reissuance under the terms of the compact and the rules of the commission. The multistate license issued by the prior home state will be deactivated and all member states notified in accordance with the applicable rules adopted by the commission.

3. Prior to the reissuance of the multistate license, the new home state shall conduct procedures for considering the criminal history records of the licensee. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

4. If required for initial licensure, the new home state may require completion of jurisprudence requirements in the new home state.

5. Notwithstanding any other provision of this compact, if a licensee does not meet the requirements set forth in this compact for the reissuance of a multistate license by the new home state, the licensee shall be subject to the new home state requirements for the issuance of a single state license in that state.

C. If a licensee changes the licensee's primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the licensee shall be subject to the state requirements for the issuance of a single state license in the new home state.

D. This compact does not interfere with a licensee's ability to hold a single state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state and only one multistate license.

E. This compact does not interfere with the requirements established by a member state for the issuance of a single state license.

SECTION 8. MILITARY FAMILIES

An active military member or the active military member's spouse shall designate a home state where the individual has a multistate license. The individual may retain the individual's home state designation during the period the active military member is on active duty.

SECTION 9. ADVERSE ACTIONS

A. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to take adverse action against a regulated social worker's multistate authorization to practice only within that member state and issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing authority in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing licensing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence is located.

B. Only the home state shall have the power to take adverse action against a regulated social worker's multistate license.

C. For the purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

D. The home state shall complete any pending investigations of a regulated social worker who changes the regulated social worker's home state during the course of the investigations. The home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the data system shall promptly notify the new home state of any adverse action.

E. A member state, if otherwise allowed by state law, may recover from the affected regulated social worker the costs of investigations and dispositions of cases resulting from any adverse action taken against that regulated social worker.

F. A member state may take adverse action based on the factual findings of another member state if the member state follows its own procedures for taking the adverse action.

G. The following apply to joint investigations:

1. In addition to the authority granted to a member state by its respective social work practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

H. If adverse action is taken by the home state against the multistate license of a regulated social worker, the regulated social worker's multistate authorization to practice in all other member states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against the license of a regulated social worker shall include a statement that the regulated social worker's multistate authorization to practice is deactivated in all member states until all conditions of the decision, order or agreement are satisfied.

I. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state and all other member states of any adverse actions by remote states.

J. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

K. This compact does not authorize a member state to demand the issuance of subpoenas for attendance and testimony of witnesses or the production of evidence from another member state for lawful actions within that member state.

L. This compact does not authorize a member state to impose discipline against a regulated social worker who holds a multistate authorization to practice for lawful actions within another member state.

SECTION 10. ESTABLISHMENT OF SOCIAL WORK LICENSURE

COMPACT COMMISSION

A. The compact member states hereby create and establish a joint government agency whose membership consists of all member states that have enacted the compact known as the social work licensure compact commission. The commission is an instrumentality of the compact states acting jointly and not an instrumentality of any one state. The commission shall come into existence on or after the effective date of the compact as set forth in section 14 of this compact.

B. The membership, voting and meetings of the commission are as follows:

1. Each member state shall have and be limited to one delegate selected by that member state's licensing authority.

2. The delegate shall be either:

(a) A current member of the licensing authority at the time of appointment who is a regulated social worker or public member of the state licensing authority.

(b) An administrator of the licensing authority or the administrator's designee.

3. The commission shall by rule or bylaw establish a term of office for delegates and may by rule or bylaw establish term limits.

4. The commission may recommend the removal or suspension of any delegate from office.

5. A member state's licensing authority shall fill any vacancy of its delegate occurring on the commission within sixty days after the vacancy.

6. Each delegate shall be entitled to one vote on all matters before the commission requiring a vote by commission delegates.

7. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates to meet by telecommunication, videoconference or other means of communication.

8. The commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws. The commission may meet by telecommunication, video conference or other similar electronic means.

C. The commission shall have the following powers:

1. Establish the fiscal year of the commission.

2. Establish code of conduct and conflict of interest policies.

3. Establish and amend rules and bylaws.

4. Maintain its financial records in accordance with the bylaws.

5. Meet and take such actions as are consistent with this compact, the commission's rules and the bylaws.

6. Initiate and conclude legal proceedings or actions in the name of the commission if the standing of any licensing authority to sue or be sued under applicable law is not affected.

7. Maintain and certify records and information provided to a member state as the authenticated business records of the commission, and designate an agent to do so on the commission's behalf.

8. Purchase and maintain insurance and bonds.

9. Borrow, accept or contract for services of personnel, including employees of a member state.

10. Conduct an annual financial review.

11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters.

12. Assess and collect fees.

13. Accept any appropriate gifts, donations, grants of monies, other sources of revenue, equipment, supplies, materials and services and receive, use and dispose of the same. At all times the commission shall avoid any appearance of impropriety or conflict of interest.

14. Lease, purchase, retain, own, hold, improve or use any property, real, personal, or mixed, or any undivided interest in the property.

15. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal, or mixed.

16. Establish a budget and make expenditures.

17. Borrow monies.

18. Appoint committees, including standing committees, composed of members, state regulators, state legislators or their representatives, consumer representatives and such other interested persons as may be designated in this compact and the bylaws.

19. Provide and receive information from, and cooperate with, law enforcement agencies.

20. Establish and elect an executive committee, including a chairperson and a vice chairperson.

21. Determine whether a state's adopted language is materially different from the model compact language such that the state would not qualify for participation in the compact.

22. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact.

D. The executive committee shall have the power to act on behalf of the commission according to the terms of this compact. The powers, duties and responsibilities of the executive committee include:

1. Overseeing the day-to-day activities of the administration of the compact, including enforcement and compliance with the compact, its rules and bylaws, and other such duties as deemed necessary.

2. Recommending to the commission changes to the rules or bylaws, changes to this compact legislation, fees charged to member states, fees charged to licensees and other fees.

3. Ensuring the compact administration services are appropriately provided, including by contract.

4. Preparing and recommending the budget.

5. Maintaining financial records on behalf of the commission.

6. Monitoring compact compliance of member states and providing compliance reports to the commission.

7. Establishing additional committees as necessary.

8. Exercising the powers and duties of the commission during the interim between commission meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the commission by rule or bylaw.

9. Performing other duties as provided in the rules or bylaws of the commission.

E. The executive committee shall be composed of up to eleven members as follows:

1. The chairperson and vice chairperson of the commission shall be voting members of the executive committee.

2. The commission shall elect five voting members from the current membership of the commission.

3. Up to four ex officio, nonvoting members from four recognized national social work organizations shall be selected by their respective organizations.

F. The commission may remove any member of the executive committee as provided in the commission's bylaws.

G. The executive committee shall meet at least annually. Executive committee meetings shall be open to the public, except that the executive committee may meet in a closed, nonpublic meeting as provided in subsection I, paragraph 2 of this section. The executive committee shall give seven days' notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the commission. The executive committee may hold a special meeting in accordance with subsection I, paragraph 1 of this section.

H. The commission shall adopt and provide to the member states an annual report.

I. Meetings of the commission are as follows:

1. All meetings shall be open to the public, except that the commission may meet in a closed, nonpublic meeting as provided in paragraph 2 of this subsection. Public notice for all meetings of the full commission shall be given in the same manner as required under the rulemaking provisions in section 12 of this compact, except that the commission may hold a special meeting when it must meet to conduct emergency business by giving forty-eight hours' notice to all commissioners, on the commission's website, and by other means as provided in the commission's rules. The commission's legal counsel shall certify that the commission's need to meet qualifies as an emergency.

2. The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting for the commission or executive committee or other committees of the commission to receive legal advice or to discuss:

(a) Noncompliance of a member state with its obligations under the compact.

(b) The employment, compensation or discipline or other matters, practices or procedures related to specific employees.

(c) Current or threatened discipline of a licensee by the commission or by a member state's licensing authority.

(d) Current, threatened or reasonably anticipated litigation.

(e) Negotiation of contracts for the purchase, lease or sale of goods, services or real estate.

(f) Accusing any person of a crime or formally censuring any person.

(g) Trade secrets or commercial or financial information that is privileged or confidential.

(h) Information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(i) Investigative records compiled for law enforcement purposes.

(j) Information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.

(k) Matters specifically exempted from disclosure by federal or member state law.

(l) Other matters as promulgated by the commission by rule.

3. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

J. Financing of the commission is as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of the commission's establishment, organization, and ongoing activities.

2. The commission may accept any appropriate revenue sources as provided in subsection C, paragraph 13 of this section.

3. The commission may levy on and collect an annual assessment from each member state and impose fees on licensees of member states to whom the commission grants a multistate license to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount for member states shall be allocated based on a formula that the commission promulgates by rule.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, and the commission shall not pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the financial review and accounting procedures established under the commission's bylaws. However, all receipts and disbursements of funds handled by the commission are subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the commission.

K. Qualified immunity, defense and indemnification are as follows:

1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or wilful or wanton misconduct of that person. The procurement of insurance of any type by the commission shall not in any way compromise or limit the immunity granted hereunder.

2. The commission shall defend any member, officer, executive director, employee and representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or as

determined by the commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining the person's own counsel at the person's own expense, and if the actual or alleged act, error, or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee and representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from the intentional or wilful or wanton misconduct of that person.

4. This compact does not limit the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws.

5. This compact does not waive or otherwise abrogate a member state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, the Clayton Act or any other state or federal antitrust or anticompetitive law or regulation.

6. This compact is not a waiver of sovereign immunity by the member states or by the commission.

SECTION 11. DATA SYSTEM

A. The commission shall provide for the development, maintenance, operation and utilization of a coordinated data system.

B. The commission shall assign each applicant for a multistate license a unique identifier as determined by the rules of the commission.

C. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact applies as required by the rules of the commission, including:

1. Identifying information.

2. Licensure data.

3. Adverse actions against a license and information related to the adverse action.

4. Nonconfidential information related to alternative program participation, the beginning and ending dates of such participation, and other information related to such participation that is not made confidential under member state law.

5. Any denial of application for licensure, and the reason or reasons for such denial.

6. The presence of current significant investigative information.

7. Other information that may facilitate the administration of this compact or the protection of the public as determined by the rules of the commission.

D. The records and information provided to a member state pursuant to this compact or through the data system, when certified by the commission or an agent of the commission, shall constitute the authenticated business records of the commission and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a member state.

E. Current significant investigative information pertaining to a licensee in any member state will only be available to other member states.

F. It is the responsibility of the member states to report any adverse action against a licensee and to monitor the database to determine whether adverse action has been taken against a licensee. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

G. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

H. Any information submitted to the data system that is subsequently expunged pursuant to federal law or the laws of the member state contributing the information shall be removed from the data system.

SECTION 12. RULEMAKING

A. The commission shall promulgate reasonable rules in order to effectively and efficiently implement and administer the purposes and provisions of the compact. A rule is invalid and has no force or effect only if a court of competent jurisdiction holds that the rule is invalid because the commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the compact, or the powers granted hereunder, or based on another applicable standard of review.

B. The rules of the commission shall have the force of law in each member state, provided that if the rules of the commission conflict with the laws of the member state that establish the member state's laws, regulations and applicable standards that govern the practice of social work as held by a court of competent jurisdiction, the rules of the commission shall be ineffective in that state to the extent of the conflict.

C. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules shall become binding on the day following adoption or the date specified in the rule or amendment, whichever is later.

D. If a majority of the legislatures of the member states rejects a rule or portion of a rule by enactment of a statute or resolution in the same manner used to adopt the compact within four years after the date of adoption of the rule, such rule shall has no further force and effect in any member state.

E. Rules shall be adopted at a regular or special meeting of the commission.

F. Prior to adoption of a proposed rule, the commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions and arguments.

G. Prior to adoption of a proposed rule by the commission, and at least thirty days before the meeting at which the commission will hold a public hearing on the proposed rule, the commission shall provide a notice of proposed rulemaking:

1. On the website of the commission or other publicly accessible platform.

2. To persons who have requested notice of the commission's notices of proposed rulemaking.

3. In such other way as the commission may by rule specify.

H. The notice of proposed rulemaking shall include:

1. The time, date and location of the public hearing at which the commission will hear public comments on the proposed rule and, if different, the time, date and location of the meeting where the commission will consider and vote on the proposed rule.

2. If the hearing is held via telecommunication, video conference or other electronic means, the commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking.

3. The text of the proposed rule and the reason for the proposed rule.

4. A request for comments on the proposed rule from any interested person.

5. The manner in which interested persons may submit written comments.

I. All hearings shall be recorded. A copy of the recording and all written comments and documents received by the commission in response to the proposed rule shall be available to the public.

J. This section does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

K. The commission, by majority vote of all members, shall take final action on the proposed rule based on the rulemaking record and the full text of the rule. The commission may adopt changes to the proposed rule if the changes do not enlarge the original purpose of the proposed rule. The commission shall provide an explanation of the reasons for substantive changes made to the proposed rule as well as reasons for substantive changes not made that were recommended by commenters. The commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in subsection L of this section, the effective date of the rule shall be not sooner than thirty days after issuing the notice that it adopted or amended the rule.

L. On a determination that an emergency exists, the commission may consider and adopt an emergency rule with forty-eight hours' notice, with opportunity to comment, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare.

2. Prevent a loss of commission or member state monies.

3. Meet a deadline for the promulgation of a rule that is established by federal law or rule.

4. Protect the public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

N. A member state's rulemaking requirements shall not apply under this compact.

SECTION 13. OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight is as follows:

1. The executive and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to implement the compact.

2. Except as otherwise provided in this compact, venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. This section does not affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct or any such similar matter.

3. The commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the commission service of process shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. Default, technical assistance and termination are as follows:

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide written notice to the defaulting state. The notice of default shall describe the default, the proposed means of curing the default and any other action that the commission may take and shall offer training and specific technical assistance regarding the default.

2. The commission shall provide a copy of the notice of default to the other member states.

C. If a state in default fails to cure the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the delegates of the member states, and all rights, privileges and benefits conferred on that state by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

D. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, the defaulting state's state licensing authority and each of the member states' licensing authority.

E. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. On the termination of a state's membership from this compact, that state shall immediately provide notice to all licensees within that state of such termination. The terminated state shall continue to recognize all licenses granted pursuant to this compact for at least six months after the date of the notice of termination.

G. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

H. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

I. Dispute resolution is as follows:

1. On request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

J. Enforcement is as follows:

1. By majority vote as provided by rule, the commission may initiate legal action against a member state in default in the United States district court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the compact and its promulgated rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees. The remedies prescribed in this subsection shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or the defaulting member state's law.

2. A member state may initiate legal action against the commission in the United States district court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the compact and its promulgated rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

3. No person other than a member state shall enforce this compact against the commission.

SECTION 14. EFFECTIVE DATE, WITHDRAWAL AND AMENDMENT

A. This compact shall come into effect on the date on which the compact statute is enacted into law in the seventh member state. On or after the effective date of the compact, the commission shall convene and review the enactment of each of the first seven member states, known as the charter member states, to determine if the statute enacted by each such charter member state is materially different than the model compact statute. A charter member state whose enactment is found to be materially different from the model compact statute shall be entitled to the default process set forth in section 13 of this compact. If any member state is later found to be in default, or is terminated or withdraws from the compact, the commission shall remain in existence and the compact shall remain in effect even if the number of member states should be less than seven. Member states enacting the compact after the seven initial charter member states shall be subject to the process set forth in section 10, subsection C, paragraph 21 of this compact to determine if their enactments are materially different from the model compact statute and whether they qualify for participation in the compact.

B. All actions taken for the benefit of the commission or in furtherance of the purposes of the administration of the compact prior to the effective date of the compact or the commission coming into existence shall be considered to be actions of the commission unless specifically repudiated by the commission.

C. Any state that joins the compact after the commission's initial adoption of the rules and bylaws shall be subject to the rules and bylaws as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

D. Any member state may withdraw from this compact by enacting a statute repealing the same. A member state's withdrawal shall not take effect until one hundred eighty days after enactment of the repealing statute. Withdrawal shall not affect the continuing requirement of the withdrawing state's licensing authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal. On the enactment of a statute withdrawing from this compact, a state shall immediately provide notice of such withdrawal to all licensees within that state. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing state shall continue to recognize all licenses granted pursuant to this compact for at least one hundred eighty days after the date of such notice of withdrawal.

E. This compact does not invalidate or prevent any licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with this compact.

F. This compact may be amended by the member states. An amendment to this compact does not become effective and binding on any member state until it is enacted into the laws of all member states.

SECTION 15. CONSTRUCTION AND SEVERABILITY

A. This compact and the commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, implementation and administration of the compact. Provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the commission's rulemaking authority solely for those purposes.

B. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any member state, of a state seeking participation in the compact or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

C. Notwithstanding subsection B of this section, the commission may deny a state's participation in the compact or, in accordance with the requirements of section 13, subsection B of this compact, terminate a

member state's participation in the compact, if the commission determines that a constitutional requirement of a member state is a material departure from the compact. Otherwise, if this compact is held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 16. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

A. A licensee who provides services in a remote state under a multistate authorization to practice shall adhere to the laws and regulations, including laws, regulations and applicable standards, of the remote state where the client is located at the time care is rendered.

B. This section does not prevent or inhibit the enforcement of any other law of a member state that is not inconsistent with the compact.

C. Any laws, statutes, regulations or other legal requirements in a member state that are in conflict with the compact are superseded to the extent of the conflict.

D. All permissible agreements between the commission and the member states are binding in accordance with their terms.

32-3301. Licensed professional counselor; licensure; requirements

A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed professional counselor shall:

1. Meet the education requirements of subsection B of this section and the work experience requirements of subsection F of this section.

2. Pass an examination approved by the board.

B. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the person has received a master's or higher degree with a major emphasis in counseling from a regionally accredited college or university in a program of study that includes at least sixty semester credit hours or ninety quarter credit hours at one of the following:

1. A program accredited by the council for the accreditation of counseling and related educational programs or the national council on rehabilitation education.

2. A program with a curriculum that has been approved by the board pursuant to section 32-3253.

3. A program with a curriculum meeting requirements as prescribed by the board by rule.

C. A program that is not accredited by the council for the accreditation of counseling and related educations programs or the national council on rehabilitation education must require seven hundred hours of supervised clinical hours and twenty-four semester hours or thirty-two quarter hours in courses in the following eight core content areas as prescribed by the board by rule:

1. Professional orientation and ethical practice.

2. Social and cultural diversity.

3. Human growth and development.

4. Career development.

5. Helping relationships.

6. Group work.

7. Assessment.

8. Research and program evaluation.

D. Credit hours offered above those prescribed pursuant to subsection C of this section must be in studies that provide a broad understanding in counseling related subjects as prescribed by the board by rule.

E. The board may accept equivalent coursework in which core content area subject matter is embedded or contained within another course, including another subject matter.

F. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the applicant has received at least twenty-four months in post-master's degree work experience in the practice of professional counseling under supervision that includes at least one thousand six hundred hours of direct client contact and that meets the requirements prescribed by the board by rule. An applicant may use a doctoral-clinical internship to satisfy the requirement for one year of work experience under supervision.

G. In addition to the requirements of subsection F of this section, the applicant must have at least one hundred hours of clinical supervision as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

H. The applicant's supervisor shall attest on a board-approved form that the applicant both:

1. Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the applicant provided direct care.

2. Has a rating of at least satisfactory in overall performance.

I. An applicant who is deficient in hours required pursuant to subsection B of this section may satisfy those requirements by successfully completing post-master's degree coursework.

J. An applicant who completed a degree before July 1, 1989 and whose course of study did not include a practicum may substitute a one-year doctoral-clinical internship or an additional year of documented post-master's degree work experience in order to satisfy the requirements of subsection B of this section.

32-3303. Licensed associate counselor; licensure; requirements; supervision

A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed associate counselor shall satisfy the requirements of section 32-3301, subsections B, H and I and pass an examination approved by the board.

B. A licensed associate counselor shall only practice under direct supervision as prescribed by the board.

32-3306. Licensed professional counselors; licensure compact

The counseling compact is enacted into law as follows:

SECTION 1. PURPOSE

A. The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

B. This compact is designed to achieve the following objectives:

1. Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses.

2. Enhance the states' ability to protect the public's health and safety.

3. Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors.

4. Support spouses of relocating active duty military personnel.

5. Enhance the exchange of licensure, investigative and disciplinary information among member states.

6. Allow for the use of telehealth technology to facilitate increased access to professional counseling services.

7. Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits.

8. Invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses.

9. Eliminate the necessity for licenses in multiple states.

10. Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

SECTION 2. DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions shall apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code chapters 1209 and 1211.

2. "Adverse action" means any administrative, civil, equitable or criminal action allowed by a state's laws that is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, limit on the licensee's practice or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action.

3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

4. "Continuing competence/education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to a practice or area of work.

5. "Counseling compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

6. "Current significant investigative information" means investigative information that either:

(a) A licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(b) Indicates that the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.

7. "Data system" means a repository of information about licensees, including continuing education, examination, licensure, investigative, privilege to practice and adverse action information.

8. "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and the adverse action has been reported to the national practitioners data bank.

9. "Encumbrance" means a revocation or suspension of, or any limit on, the full and unrestricted practice of licensed professional counseling by a licensing board.

10. "Executive committee" means a group of directors elected or appointed to act on behalf of and within the powers granted to them by the commission.

11. "Home state" means the member state that is the licensee's primary state of residence.

12. "Impaired practitioner" means an individual who has a condition that may impair the individual's ability to practice as a licensed professional counselor without some type of intervention and that may include alcohol or drug dependence, a mental health impairment and a neurological or physical impairment.

13. "Investigative information" means information, records and documents received or generated by a professional counseling licensing board pursuant to an investigation.

14. "Jurisprudence requirement" means, if required by a member state, the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.

15. "Licensed professional counselor" means a counselor who is licensed by a member state, regardless of the title used by that state, to independently assess, diagnose and treat behavioral health conditions.

16. "Licensee" means an individual who currently holds an authorization from a state to practice as a licensed professional counselor.

17. "Licensing board" means the agency of a state, or the equivalent, that is responsible for licensing and regulating licensed professional counselors.

18. "Member state" means a state that has enacted the compact.

19. "Privilege to practice" means a legal authorization that is equivalent to a license and that authorizes the practice of professional counseling in a remote state.

20. "Professional counseling" means the assessment, diagnosis and treatment of behavioral health conditions by a licensed professional counselor.

21. "Remote state" means a member state other than the home state where a licensee is exercising or seeking to exercise the privilege to practice.

22. "Rule" means a regulation promulgated by the commission that has the force of law.

23. "Single-state license" means a licensed professional counselor license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

24. "State" means any state, commonwealth, district or territory of the United States that regulates the practice of professional counseling.

25. "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose and treat behavioral health conditions.

26. "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the compact, a state must currently do all of the following:

1. License and regulate licensed professional counselors.

2. Require licensees to pass a nationally recognized exam approved by the commission.

3. Require licensees to have a sixty-semester-hour or ninety-quarter-hour master's degree in counseling or sixty semester hours or ninety quarter hours of graduate coursework, including in the following topic areas:

(a) Professional counseling orientation and ethical practice.

(b) Social and cultural diversity.

(c) Human growth and development.

(d) Career development.

(e) Counseling and helping relationships.

(f) Group counseling and group work.

(g) Diagnosis and treatment.

(h) Assessment and testing.

(i) Research and program evaluation.

(j) Other areas as determined by the commission.

4. Require licensees to complete a supervised postgraduate professional experience as defined by the commission.

5. Have a mechanism in place for receiving and investigating complaints about licensees.

B. A member state shall do all of the following:

1. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules.

2. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

3. Implement or use procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records and shall include the following:

(a) A member state must fully implement a criminal background check requirement within a time frame established by rule by receiving the results of the federal bureau of investigation record search and using the results in making licensure decisions.

(b) Communication between a member state and the commission and among member states regarding the verification of eligibility for licensure through the compact shall not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

4. Comply with the rules of the commission.

5. Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or licensure renewal, as well as all other applicable state laws.

6. Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

7. Provide for the attendance of the state's commissioner to the counseling compact commission meetings.

C. Member states may charge a fee for granting the privilege to practice.

D. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. The single-state license granted to these individuals shall not be recognized as granting a privilege to practice professional counseling in any other member state.

E. This compact does not affect the requirements established by a member state for issuing a single-state license.

F. A license issued to a licensed professional counselor by a home state to a resident in that state shall be recognized by each member state as authorizing the licensed professional counselor to practice professional counseling under a privilege to practice in each member state.

SECTION 4. PRIVILEGE TO PRACTICE

A. To exercise the privilege to practice under the terms and provisions of the compact, the licensee shall meet all of the following:

1. Hold a license in the home state.

2. Have a valid United States social security number or national practitioner identifier.

3. Be eligible for a privilege to practice in any member state in accordance with subsections D, G and H of this section.

4. Not have had any encumbrance or restriction against any license or privilege to practice within the previous two years.

5. Notify the commission that the licensee is seeking the privilege to practice within a remote state or states.

6. Pay any applicable fees, including any state fee, for the privilege to practice.

7. Meet any continuing competence/education requirements established by the home state.

8. Meet any jurisprudence requirements established by the remote state or states in which the licensee is seeking a privilege to practice.

9. Report to the commission any adverse action, encumbrance or restriction taken on the license by any nonmember state within thirty days after the date the action is taken.

B. The privilege to practice is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection A of this section to maintain the privilege to practice in the remote state.

C. A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

D. A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines and civil penalties or take any other necessary actions to protect the health and safety of its citizens, or any combination of these actions. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines and civil penalties are paid.

E. If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until both of the following occur:

1. The home state license is no longer encumbered.

2. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection A of this section to obtain a privilege to practice in any remote state.

G. If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until all of the following occur:

1. The specific period of time for which the privilege to practice was removed has ended.

2. All fines and civil penalties have been paid.

3. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

H. Once the requirements of subsection G of this section have been met, the licensee must meet the requirements in subsection A of this section to obtain a privilege to practice in a remote state.

SECTION 5. OBTAINING A NEW HOME STATE LICENSE BASED

ON A PRIVILEGE TO PRACTICE

A. A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

B. If a licensed professional counselor changes the primary state of residence by moving between two member states, all of the following must occur:

1. The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees and notify the current and new home state in accordance with applicable rules adopted by the commission.

2. On receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in section 4 of this compact via the data system, without need for primary source verification except for all of the following:

(a) A federal bureau of investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544.

(b) Any other criminal background check as required by the new home state.

(c) Completion of any requisite jurisprudence requirements of the new home state.

3. The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

4. Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in section 4 of this compact, the new home state may apply its requirements for issuing a new single-state license.

5. The licensed professional counselor shall pay all applicable fees to the new home state in order to be issued a new home state license.

C. If a licensed professional counselor changes the primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria apply for issuance of a single-state license in the new state.

D. This compact does not interfere with a licensee's ability to hold a single-state license in multiple states. For the purposes of this compact, a licensee shall have only one home state license.

E. This compact does not affect the requirements established by a member state for the issuance of a single-state license.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL AND THEIR SPOUSES

Active duty military personnel and their spouses shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. After designating a home state, the individual shall change the individual's home state only by applying for licensure in the new state or through the process outlined in section 5 of this compact.

SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

A. Member states shall recognize the right of a licensed professional counselor who is licensed by a home state in accordance with section 3 of this compact and under rules promulgated by the commission to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

B. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

SECTION 8. ADVERSE ACTIONS

A. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against a licensed professional counselor's privilege to practice within that member state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedures of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence is located.

3. Only the home state shall have the power to take adverse action against a licensed professional counselor's license issued by the home state.

B. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state and shall apply its own state laws to determine appropriate action.

C. The home state shall complete any pending investigations of a licensed professional counselor who changes the primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.

D. A member state, if otherwise allowed by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of cases resulting from any adverse action taken against that licensed professional counselor.

E. A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

F. With respect to joint investigations:

1. In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under this compact.

G. If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the home state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor shall include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.

H. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

I. This compact does not override a member state's decision that participation in an alternative program may be used instead of adverse action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The compact member states hereby create and establish a joint public agency known as the counseling compact commission, to which all of the following apply:

1. The commission is an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. This compact shall not be construed to waive sovereign immunity.

B. Membership, voting and meetings of the commission are as follows:

1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.

2. The delegate shall be either:

(a) A current member of the licensing board at the time of appointment who is a licensed professional counselor or public member.

(b) An administrator of the licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state licensing board shall fill any vacancy occurring on the commission within sixty days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

8. The commission shall by rule establish a term of office for delegates and may by rule establish term limits.

C. The commission shall have the following powers and duties:

1. Establish the fiscal year of the commission.

2. Establish bylaws.

3. Maintain its financial records in accordance with the bylaws.

4. Meet and take such actions as are consistent with the provisions of this compact and the bylaws.

5. Promulgate rules that shall be binding to the extent and in the manner provided for in this compact.

6. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law is not affected.

7. Purchase and maintain insurance and bonds.

8. Borrow, accept or contract for services of personnel, including employees of a member state.

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters.

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services and receive, use and dispose of the same. The commission shall avoid at all times any appearance of impropriety or conflict of interest.

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed. The commission shall avoid at all times any appearance of impropriety.

12. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed.

13. Establish a budget and make expenditures.

14. Borrow monies.

15. Appoint committees, including standing committees, composed of members, state regulators, state legislators or their representatives and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws.

16. Provide and receive information from and cooperate with law enforcement agencies.

17. Establish and elect an executive committee.

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of professional counseling licensure and practice.

D. The following apply to the executive committee of the commission:

1. The executive committee shall have the power to act on behalf of the commission according to the terms of this compact.

2. The executive committee shall be composed of up to eleven members, including seven voting members who are elected by the commission from the current membership of the commission and up to four ex officio, nonvoting members from four recognized national professional counselor organizations who are selected by their respective organizations.

3. The commission may remove any member of the executive committee as provided in the bylaws.

4. The executive committee shall meet at least annually.

5. The executive committee shall have all of the following duties and responsibilities:

(a) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states, such as annual dues, and any commission compact fee charged to licensees for the privilege to practice.

(b) Ensure that compact administration services are appropriately provided, contractual or otherwise.

(c) Prepare and recommend the budget.

(d) Maintain financial records on behalf of the commission.

(e) Monitor compact compliance of member states and provide compliance reports to the commission.

(f) Establish additional committees as necessary.

(g) Other duties as provided in rules or bylaws.

E. The following apply to meetings of the commission:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in section 11 of this compact.

2. The commission, the executive committee and other committees of the commission may convene in a closed, nonpublic meeting if the commission, executive committee or other committee of the commission must discuss any of the following:

(a) Noncompliance of a member state with its obligations under this compact.

(b) The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

(c) Current, threatened or reasonably anticipated litigation.

(d) Negotiation of contracts for the purchase, lease or sale of goods, services or real estate.

(e) Accusing any person of a crime or formally censuring any person.

(f) Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(g) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(h) Disclosure of investigative records compiled for law enforcement purposes.

(i) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.

(j) Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting or portion of a meeting is closed pursuant to this subsection, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or an order of a court of competent jurisdiction.

F. With respect to financing, the commission:

1. Shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. May accept any and all appropriate revenue sources, donations and grants of monies, equipment, supplies, materials and services.

3. May levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the commission. The commission shall promulgate a rule that is binding on all member states.

4. Shall not incur obligations of any kind before securing the monies adequate to meet those obligations or pledge the credit of any of the member states, except by and with the authority of the member state.

5. Shall keep accurate accounts of all receipts and disbursements of monies. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of monies handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

G. With respect to qualified immunity, defense and indemnification:

1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities. This paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by that person's intentional or wilful or wanton misconduct.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining his or her own counsel if the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

SECTION 10. DATA SYSTEM

A. The commission shall provide for the development, maintenance, operation and use of a coordinated database and reporting system containing licensure, adverse action and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact applies as required by the rules of the commission, including all of the following:

1. Identifying information.

2. Licensure data.

3. Adverse actions against a license or privilege to practice.

4. Nonconfidential information related to alternative program participation.

5. Any denial of application for licensure and the reasons for such denial.

6. Current significant investigative information.

7. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. Investigative information pertaining to a licensee in any member state shall be available only to other member states.

D. The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 11. RULEMAKING

A. The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purpose of the compact. If the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under the compact, the action taken by the commission is invalid and has no force or effect.

B. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted pursuant to this section. Rules and amendments to the rules shall become binding as of the date specified in each rule or amendment.

C. If a majority of the legislatures of the member states rejects a rule by enacting a statute or resolution in the same manner used to adopt the compact within four years after the date of adoption of the rule, the rule has no further force and effect in any member state.

D. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

E. Before promulgating and adopting a final rule, the commission shall file a notice of a proposed rulemaking at least thirty days before the meeting at which the rule will be considered and voted on. Notice must be given on both:

1. The commission's website or other publicly accessible platform.

2. The website of each member state's licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

F. The notice of proposed rulemaking shall include all of the following:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on.

2. The text of the proposed rule or amendment and the reason for the proposed rule.

3. A request for comments on the proposed rule from any interested person.

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

G. Before adopting a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

H. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendments to a rule if a hearing is requested by one of the following:

1. At least twenty-five persons.

2. A state or federal governmental subdivision or agency.

3. An association having at least twenty-five members.

I. If a hearing is held on the proposed rule or amendment to a rule, the commission shall publish the place, time and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing. The following apply with respect to hearings:

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing at least five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment with a fair and reasonable opportunity to comment orally or in writing.

3. All hearings shall be recorded and a copy of the recording made available on request.

4. This section does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

K. If a written notice of intent to attend the public hearing by interested parties is not received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

M. On determining that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, an opportunity for comment or a hearing, except that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to do one of the following:

1. Meet an imminent threat to public health, safety or welfare.

2. Prevent a loss of commission or member state monies.

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

4. Protect public health and safety.

N. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for the purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the commission's website. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chairperson of the commission before the end of

the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight is as follows:

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the commission.

3. The commission is entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall do both of the following:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and any other action to be taken by the commission.

2. Provide remedial training and specific technical assistance regarding the default.

C. If a state in default fails to cure the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

D. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.

E. A state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

G. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

H. On request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement provisions of this compact are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

3. The remedies under this section are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING

COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL

AND AMENDMENT

A. The compact is effective on the date the compact statute is enacted into law in the tenth member state. The provisions of the compact become effective at that time and are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to implement and administer the compact.

B. Any state that joins the compact after the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the compact. The withdrawal of a member state:

1. Does not take effect until six months after enactment of the repealing statute.

2. Does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of the withdrawal.

D. This compact does not invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

E. This compact may be amended by the member states. An amendment to this compact does not become effective and binding on any member state until it is enacted into the laws of all member states.

SECTION 14. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.

B. This compact does not prevent the enforcement of any other law of a member state that is not inconsistent with the compact.

C. Any laws in a member state that conflict with the compact are superseded to the extent of the conflict.

D. Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding on the member states.

E. All permissible agreements between the commission and the member states are binding in accordance with their terms.

F. If any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

32-3311. Licensed marriage and family therapist; licensure; qualifications

A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist shall furnish documentation as prescribed by the board by rule that the person has:

1. Earned a master's or doctoral degree in behavioral science, including, but not limited to, marriage and family therapy, psychology, sociology, counseling and social work, granted by a regionally accredited college or university in a program accredited by the commission on accreditation for marriage and family therapy education or a degree based on a program of study that the board determines is substantially equivalent.

2. Completed one thousand six hundred hours of post-master's degree experience in at least twenty-four months in the practice of marriage and family therapy under supervision that meets the requirements prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The one thousand six hundred hours must consist of direct client contact and include at least one thousand hours of clinical experience with couples and families and at least one hundred hours of clinical supervision as prescribed by the board by rule.

3. Passed an examination approved by the board.

4. Provided an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

B. The curriculum for the master's or doctoral degree in behavioral science accepted by the board pursuant to subsection A, paragraph 1 of this section shall include a specified number of graduate courses as prescribed by the board by rule and shall be consistent with national standards of marriage and family therapy. Part of this course of study may be taken in a post-master's degree program as approved by the board.

C. The one thousand hours of clinical experience required by subsection A, paragraph 2 of this section may include one year in an approved marriage and family doctoral internship program.

32-3313. Licensed associate marriage and family therapist; licensure; requirements; supervision

A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed associate marriage and family therapist shall satisfy the requirements of section 32-3311, subsection A, paragraphs 1 and 3 and subsection B.

B. A licensed associate marriage and family therapist shall only practice under direct supervision as prescribed by the board.

32-3321. Licensed addiction technician; licensed associate addiction counselor; licensed independent addiction counselor; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of addiction counseling as a licensed addiction technician shall present documentation as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) An associate degree in addiction with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.

(b) A bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.

2. Passed an examination approved by the board.

B. A licensed addiction technician shall practice only under direct supervision as prescribed by the board.

C. The board may waive the education requirement for an applicant requesting licensure as an addiction technician if the applicant provides services pursuant to contracts or grants with the federal government under the authority of Public Law 93-638 (25 United States Code sections 5301 through 5332) or Public Law 94-437 (25 United States Code sections 1601 through 1683). A person who becomes licensed as an addiction technician pursuant to this subsection shall provide addiction services only to those persons who are eligible for services pursuant to Public Law 93-638 (25 United States Code sections 5301 through 5332) or Public Law 94-437 (25 United States Code sections 1601 through 1683).

D. A person who wishes to be licensed by the board to engage in the practice of addiction counseling as a licensed associate addiction counselor shall present evidence as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) A bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university and present documentation as prescribed by the board by rule that the applicant has received at least one thousand six hundred hours of direct client contact work experience in at least twenty-four months in addiction counseling under supervision that meets the requirements prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

(b) A master's or higher degree in a behavioral science with an emphasis on counseling as prescribed by the board by rule from a regionally accredited college or university.

2. Passed an examination approved by the board.

3. Provided an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

E. A licensed associate addiction counselor shall practice only under direct supervision as prescribed by the board.

F. A person who wishes to be licensed by the board to engage in the practice of addiction counseling as a licensed independent addiction counselor shall:

1. Have received a master's or higher degree in a behavioral science with an emphasis on counseling, in a program that is approved by the board pursuant to section 32-3253 or that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.

2. Present documentation as prescribed by the board by rule that the applicant has received at least one thousand six hundred hours of work experience in at least twenty-four months in addiction counseling with direct client contact under supervision that meets the requirements as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

3. Pass an examination approved by the board.

4. Provide an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

E-8.

VETERINARY MEDICAL EXAMINING BOARD
Title 3, Chapter 11, Articles 1-10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **ARIZONA VETERINARY MEDICAL EXAMINING BOARD**
Title 3, Chapter 11

Summary

This Five-Year Review Report (5YRR) from the Arizona Veterinary Medical Examining Board (Board) covers fifty-three (53) rules and one (1) table in Title 3, Chapter 11. Specifically, these rules cover the following articles:

- Article 1. General Provisions
- Article 2. Application and Examination for Licensure
- Article 3. Temporary Permittees
- Article 4. Continuing Education Requirements
- Article 5. Standards of Practice
- Article 6. Veterinary Technicians
- Article 7. Veterinary Medical Premises and Equipment
- Article 8. Drug Dispensing
- Article 9. Investigations and Hearings
- Article 10. Animal Crematory Minimum Standards

In the Board's previous 5 YRR, the Board indicated that they would complete a rulemaking to address statutory changes and to improve the rules to be clearer, more concise, and more understandable. The Board has indicated that they did not complete their previous proposed

course of action. The Board has indicated that there were a couple reasons on why those actions were not completed. At the time of the last 5 YRR, the legislature had amended several statutes in 2019, the Board has indicated that the previous 5 YRR was based on the expectation that there would need to be changes. However, after further review the Board has indicated that the changes were not necessary because the statutes were detailed enough that new rules were not needed or that the rules were already in compliance with statute. With the exception of clarifying temporary licenses, the Board did not propose any amendments to the rules that were identified in the previous 5 YRR as needed as a result of statutory changes.

Other changes proposed by the Board in the last 5YRR included amendments that were expected to be made based on technological advances. The new technology was not implemented in the time between the previous report and this report making the changes unnecessary. The Board has indicated that they have a new electronic licensing system that should be launching in the coming months making some of those changes necessary once again. This system was supposed to launch earlier but there have been delays.

Proposed Action

The Board has indicated that the legislature has further amended the Board's statutes and that many of the rules now are no longer consistent with other rules and statutes, and cannot be enforced as written. The Board indicates that they intend on getting a final rulemaking to the Council by September 2025. The Board has indicated that this would be the earliest possible date because of some short term staffing deficiencies and working on the Board's sunset audit and new e-licensing system, which is a complete overhaul of their current system. The Board indicated to council staff that they have begun researching other states' rules to see if they can ease licensing burdens on professionals.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific statutory authority for these rules

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board has completed no rulemaking since the Council approved the Board's last 5YRR on December 3, 2019, so there is no new economic, small business, and consumer impact estimate to assess. In the 5YRR approved on December 3, 2019, the Board indicated the economic impact of the rules was consistent with that projected when the rules were made. The Board states that it has received no information causing it to change that conclusion. The Board currently licenses 3,665 veterinarians, 1022 veterinary medical premises, and 17 animal crematories. Also, 1,489 veterinary technicians (CVT) hold certificates.

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

The Board states that many of the costs of these rules, including paperwork and other compliance costs, to persons regulated by the rules result from statutory directives provided by the legislature. The Board indicates that some rule provisions impose a cost on persons regulated by the rules. The Board states that in each of these cases, the Board established the provision because the Board determined that doing so was necessary to protect health and safety, The Board believes each provision is the minimum necessary to achieve the underlying objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board 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 Board indicates the rules are clear, concise, and understandable except for the following:

- R3-11-401(C)
    - The Board indicates the rule is not clear in how college coursework counts towards continuing education requirements.
- R3-11-101
    - The Board states that the definition of Mobile Unit is not clear because the rule does not explicitly state that mobile unit is strictly a mobile veterinary practice like a housecall.
- R3-11-401(5)
    - The Board has indicated that the term interactive needs to be defined as it relates to continuing education, because it is not clear what an interactive program would consist of.
- R3-11-101(A)
    - The Board states that this rule contains an incorrect reference to statute, and needs to be changed from A.R.S. § 32-2281(E) to A.R.S. § 32-2281(F).

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are generally consistent with other rules and statutes except for the following:

- R3-11-204(C)
    - The Board states that the rule is not consistent with statute because the rule states that a renewal of a license must occur "no later than February 1" and A.R.S. § 32-2218(B0 states renewal must occur "before February 1".
- General
    - The rules currently do not specify the process for renewals for premises licenses.
- R3-11-203(B)

    - The Board has indicated that this rule requires veterinary applicants who are not students to submit a transcript or proof of completion of the program. This requirement is not in the rules for those who apply under the Foreign Veterinary Graduates or the Program for the Assessment of Veterinary Education Equivalence. These alternative pathways are authorized by A.R.S. § 32-2215(A)(1)
- R3-11-203(C)-(D)
    - The Board indicates that due to 2022 legislature changes to A.R.S. §§32-2215(A)(1), 32-2242(B), and 32-2248(1) the current rule requirement of finding an applicant good character or reputation, has integrity or is honest, moral, trustworthy or truthful to be eligible for a license, permit, certification, is now out of date.
- Article 3
    - The rules do not currently address the ability of the board to issue temporary licenses with that authority being given to the Board as a result of 2019 legislation that amended A.R.S. §§ 32-3121 through 32-3124.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Board indicates the rules are effective in achieving their objectives.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Board indicates the rules are generally enforced as written with the exception of the following:

- R3-11-203(B)
    - The Board has indicated that the rules do not allow an applicant to submit transcripts by methods other than mail, however the Board does in practice allow alternative methods as long as the transcripts are primary source documents.
- R3-11-203(C) and (D)
    - The rules still mention references to the requirements of letters of character reference, and these rules are not enforced because of conflicts with statute.
- R-3-11-203(A)
    - The Board indicates that the 45 day requirement for soon to be graduates is not enforced because of changes to the testing protocols for applicants. Testing now occurs more often so the requirement is no longer necessary.
- R3-11-403(6)
    - The Board indicates that the rule requires documents to be uploaded for online renewal. The online e-licensing system is not yet in place so this rule is not enforced. The Board has indicated that the new system should launch in 2025, and expect the rule to be enforced once it launches.
- General

- The rules contain references to outdated technologies and need to be amended. Additionally, once the new e-licensing system is launched most of the rules will need to be updated to reflect alternative means for submitting and receiving documents.

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.

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 Board's statutes require individualized licenses be issued, so a general permit is not applicable. Given that an alternative type of license is specifically authorized by state statute, the Board is in compliance with A.R.S. § 41-1037.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Veterinary Medical Examining Board (Board) covers fifty-three (53) rules and one (1) table in Title 3, Chapter 11. The Board has indicated that both statutory changes and improvements in Board technology necessitate that the rules be amended. The Board has indicated that the earliest possible date for submitting a Notice of Final Rulemaking to the Council would be September 2025. The Board has indicated to Council staff that this date is a result of a new licensing system and currently being engaged in a sunset audit.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

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October 27, 2024

Via Email: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Veterinary Medical Examining Board
A.A.C. Title 3. Agriculture, Chapter 11
Articles 1 through 10
Five Year Review Report

Dear Chairman Klein:

Please find enclosed the Five Year Review Report of the Arizona Veterinary Medical Examining Board ("Board") for A.A.C. Title 3, Chapter 11, which is due on October 28, 2024.

The Board hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact the Board's Executive Director at 602-542-8150 or Victoria.whitmore@vetboard.az.gov.

Regards,

V. Whitmore

Victoria Whitmore
Executive Director

Enclosure

Five-Year-Review Report
A.A.C. Title 3. Agriculture
Chapter 11. Veterinary Medical Examining Board
Articles 1 through 10
October 2024

INTRODUCTION

The primary responsibility of the Board is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of veterinary medicine through licensure and regulation of the profession.

The Board has 53 rules and one table. The Board has completed no rulemakings since its last five-year-review report was approved by Council on December 3, 2019. The Board currently licenses 3665 veterinarians, 1022 veterinary medical premises, and 17 animal crematories. Also, 1,489 veterinary technicians (CVT) hold certificates. The Board's current appropriation is $787,900, which supports 6.0 FTEs.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2207(8)

1. Specific statute authorizing the rule:

R3-11-101.	Definitions: A.R.S. § 32-2207(8)
R3-11-102.	Board Meetings: A.R.S. § 32-2204
R3-11-103.	Evaluating Board Services: A.R.S. § 32-2207(8)(c)
R3-11-104.	Premise License: A.R.S. §§ 32-2271 and 32-2272
R3-11-105.	Fees: A.R.S. §§ 32-2207(9), 32-2215, 32-2217, 32-2218, 32-2219, 32-2242, 32-2247, 32-2248, 32-2250, 32-2272, and 32-2273
R3-11-107.	Residence and Veterinary Practice Addresses: A.R.S. §§ 32-2207(8) and 32-2233(B)(2)
R3-11-108.	Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals: A.R.S. §§ 32-2207(3) and 41-1072 through 41-1079
Table 1.	Time-frames (in days): A.R.S. §§ 32-2207(3) and 41-1072 through 41-1079

R3-11-109. Arizona Ombudsman-Citizens' Aide: A.R.S. § 32-2207(10)

R3-11-201. Application for a Veterinary Medical License: A.R.S. §§ 32-2213, 32-2214, and 32-2215

R3-11-203. Documents Required with a License Application: A.R.S. §§ 32-2213, 32-2214, 32-2215, and 41-1080

R3-11-204. Renewal of Veterinary License: A.R.S. § 32-2218

R3-11-301. Application for a Temporary Permit: A.R.S. § 32-2216

R3-11-304. Extension of Temporary Permits: A.R.S. § 32-2216(B)

R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination: A.R.S. § 32-2216(B)

R3-11-401. Continuing Education: A.R.S. § 32-2207(8)

R3-11-402. Approval of Continuing Education: A.R.S. § 32-2207(8)

R3-11-403. Documentation of Attendance: A.R.S. §32-2207(8)

R3-11-405. Waiver: A.R.S. § 32-2207(8)

R3-11-501. Ethical Standards: A.R.S. § 32-2232(12)

R3-11-502. Standards of Practice: A.R.S. §§ 32-2207(8)(a) and 32-2275

R3-11-603. Examination Committee: A.R.S. § 32-2243

R3-11-604. Examinations: A.R.S. § 32-2243

R3-11-605. Certified Veterinary Technician Services: A.R.S. §§ 32-2241 and 32-2245

R3-11-606. Application for Veterinary Technician Certification: A.R.S. § 32-2207(3) and 32-2242

R3-11-607. Renewal of Veterinary Technician Certificate: A.R.S. §§ 32-2207(3) and 32-2246

R3-11-701. General Veterinary Medical Premises Standards: A.R.S. §§ 32-2271 and 32-2275

R3-11-702. Equipment and Supplies: A.R.S. § 32-2275

R3-11-703. Maintenance Standards for a Veterinary Medical Premises: A.R.S. § 32-2275

R3-11-704. Surgical Equipment: A.R.S. § 32-2275

R3-11-705. Mobile Clinics: A.R.S. §§ 32-2271 and 32-2275

R3-11-706. Mobile Units: A.R.S. §§ 32-2271 and 32-2275

R3-11-707. Application for a Veterinary Medical Premises License: A.R.S. §§ 32-2272 and 32-2273

R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May be Available at a Pharmacy: A.R.S. § 32-2281(B)

R3-11-802. Labeling Requirements: A.R.S. § 32-2281(D)

R3-11-803. Packaging Requirements: A.R.S. § 32-2281(D)

R3-11-805. Storage: A.R.S. § 32-2281(D)

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug: A.R.S. § 32-2281

R3-11-901. Investigations of Alleged Violations: A.R.S. §§ 32-2207(6) and 32-2237

R3-11-902. Informal Interview: A.R.S. §§ 32-2207(2) and 32-2234

R3-11-903. Formal Hearings: A.R.S. §§ 32-2207(2) and 32-2234

R3-11-904. Rehearing or Review of Decisions: A.R.S. § 41-1092.09

R3-11-905. Depositions, Issuance of Subpoenas, Service: A.R.S. § 32-2237(F)

R3-11-1001. Definitions: A.R.S. §§ 32-2291 through 32-2295

R3-11-1002. Obtaining an Animal Crematory License: A.R.S. §§ 32-2291 and 32-2292

R3-11-1003. Renewing an Animal Crematory License: A.R.S. § 32-2292(E)

R3-11-1004. Fees: A.R.S. § 32-2293

R3-11-1005. Minimum Standards for an Animal Crematory: A.R.S. § 32-2295

R3-11-1006. Minimum Operating Standards for an Animal Crematory: A.R.S. §§ 32-2297(A)(2) and 32-2295

R3-11-1007. Written Procedures Required: A.R.S. § 32-2295

R3-11-1008. Recordkeeping Requirements: A.R.S. §§ 32-2294(A)(3) and 32-2295

R3-11-1009. Change in Responsible Owner: A.R.S. § 32-2294(A)(1)

R3-11-1010. Change in Operator: A.R.S. § 32-2294(A)(1)

2. Objective of each rule:

RULE	OBJECTIVE
R3-11-101	Definitions: The objective of the rule is to define terms used in the rules that are not adequately explained by dictionary definitions.
R3-11-102	Board Meetings: The objective of this rule is to specify the month in which the Board will hold its annual meeting, the amount of notice it will provide regarding the date, time, and location of the annual meeting, and the location of notice of a special meeting.
R3-11-103	Evaluating Board Services: The objective of this rule is to inform individuals of the opportunity to evaluate the quality of services received from the Board.
R3-11-104	Premise License: The objective of this rule is to require that a medical premise license be maintained at the licensed premise.
R3-11-105	Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities.
R3-11-107	Residence and Veterinary Practice Addresses: The objective of this rule is to require a licensee or certificate holder to keep the Board informed of the licensee's or certificate holder's residential and practice addresses.
R3-11-108	Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals: The objective of this rule is to specify the time frames within which the Board will act on a license, certificate, or permit application or application for

	approval of a continuing education course or conference.
Table 1	Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or permit application or application for approval of a continuing education course or conference.
R3-11-109	Arizona Ombudsman-Citizens' Aide: The objective of this rule is to specify the manner in which the Board will inform the public of the existence of the Arizona Ombudsman-Citizens' Aide.
R3-11-201	Application for a Veterinary Medical License: The objective of this rule is to specify the content of an application for a veterinary medical license and the time at which an application must be submitted.
R3-11-203	Documents Required with a License Application: The objective of this rule is to specify the documents that must accompany an application for licensure.
R3-11-204	Renewal of Veterinary License: The objective of this rule is to specify the requirements for renewal of a veterinary license, the manner in which renewal application is made, and consequences of failing to renew.
R3-11-301	Application for a Temporary Permit: The objective of this rule is to specify the requirements for applying for a temporary permit, which is available to an individual who has graduated from an accredited veterinary college but has not taken the state examination.
R3-11-304	Extension of Temporary Permits: The objective of this rule is to specify the circumstances under which the holder of a temporary permit may have the permit extended and to provide notice to holders of temporary permits that only one extension is permitted by law.
R3-11-305	"Good and Sufficient Reason" for Failure to Take a State Examination: The objective of this rule is to specify the circumstances the Board believes amount to "good and sufficient reason" for not taking the state examination.
R3-11-401	Continuing Education: The objective of this rule is to specify the number of hours of continuing education required for license and certificate renewal and to place limits on the number of hours by subject matter and instructional medium.
R3-11-402	Approval of Continuing Education: The objective of this rule is to identify continuing education the Board approves without application, the manner in which a continuing education provider may apply for Board approval, and the standards the Board uses to decide whether to approve continuing education.
R3-11-403	Documentation of Attendance: The objective of this rule is to specify the documentation of continuing education that a licensee or certificate holder must submit with a renewal application.
R3-11-405	Waiver: The objective of this rule is to specify the manner in which a licensee or certificate holder may request a waiver of the continuing education requirement and the criteria the Board uses to determine whether to grant a waiver.
R3-11-501	Ethical Standards: The objective of this rule is to protect the public by establishing ethical standards with which a veterinarian practicing under a license or permit must comply and specifying the consequences of failing to comply.
R3-11-502	Standards of Practice: The objective of this rule is to establish minimum standards for a veterinary practice.
R3-11-603	Examination Committee: The objective of this rule is to provide notice the Board may seek input from a committee of licensees and certificate holders regarding examination of applicants for certification.
R3-11-604	Examinations: The objective of this rule is to provide information to certification applicants regarding the examinations that must be passed to obtain certification.

R3-11-605	Certified Veterinary Technician Services: The objective of this rule is to specify that a certified veterinary technician may perform delegated tasks while under the direction, supervision, and control of a licensed veterinarian. The rule also specifies the tasks that may not be delegated to and performed by a certified veterinary technician.
R3-11-606	Application for Veterinary Technician Certification: The objective of this rule is to specify the application requirements for certification as a veterinary technician.
R3-11-607	Renewal of Veterinary Technician Certificate: The objective of this rule is to specify the requirements to renew a certificate as a veterinary technician and the consequences of failing to timely renew.
R3-11-701	General Veterinary Medical Premises Standards: The objective of this rule is to specify applicable minimum standards for operation of a veterinary medical premise.
R3-11-702	Equipment and Supplies: The objective of this rule is to require a responsible veterinarian to have at the veterinary medical premise the equipment and supplies necessary to provide the offered medical services.
R3-11-703	Maintenance Standards for a Veterinary Medical Premises: The objective of this rule is to establish minimum maintenance standards for a veterinary medical premise and require the responsible veterinarian to ensure compliance.
R3-11-704	Surgical Equipment: The objective of this rule is to specify the minimum surgical equipment required on a veterinary medical premise at which surgery is performed.
R3-11-705	Mobile Clinics: The objective of this rule is to specify the minimum standards applicable for operation of a mobile veterinary medical clinic and clarify that a mobile clinic is required to be licensed as a veterinary medical premise.
R3-11-706	Mobile Units: The objective of this rule is to specify minimum standards for storage and handling of drugs and surgical supplies and equipment for a mobile veterinary medical unit.
R3-11-707	Application for a Veterinary Medical Premises License: The objective of this rule is to specify the application requirements for a veterinary medical premise license and to provide notice that the Board will conduct an inspection of the veterinary medical premise.
R3-11-801	Notification that Prescription-only Drugs or Controlled Substances May be Available at a Pharmacy: The objective of this rule is to require a dispensing veterinarian to inform the owner or person responsible for an animal that a prescription-only drug may be available at a pharmacy rather than from the dispensing veterinarian, specifying the manner in which the information may be provided, and authorizing the dispensing veterinarian to provide a written prescription upon request.
R3-11-802	Labeling Requirements: The objective of this rule is to establish minimum labeling requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.
R3-11-803	Packaging Requirements: The objective of this rule is to establish minimum packaging requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.
R3-11-805	Storage: The objective of this rule is to establish minimum storage requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.
R3-11-807	Dispensing a Controlled Substance or Prescription-only Drug: The objective of this rule is to clarify the dispensing activities that may be performed by a licensed veterinarian or an unlicensed individual.
R3-11-901	Investigations of Alleged Violations: The objective of this rule is to set forth the

	grounds on which an individual or the Board may complain of an alleged violation of statute or rule and to clarify the manner in which the Board initially responds to receipt of a complaint. The objective of the rule is to specify the Board's procedure for handling a complaint against a licensee and taking disciplinary action.
R3-11-902	Informal Interview: The objective of this rule is to specify the manner in which the Board conducts an informal interview.
R3-11-903	Formal Hearings: The objective of the rule is to specify the circumstances under which a complaint against a licensee leads to a formal hearing and the Board's procedure for conducting a formal hearing.
R3-11-904	Rehearing or Review of Decisions: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.
R3-11-905	Depositions, Issuance of Subpoenas, Service: The objective of this rule is to specify the process for requesting to take the deposition of an unavailable witness, issuing a subpoena, or making service of documents.
R3-11-1001	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.
R3-11-1002	Obtaining an Animal Crematory License: The objective of this rule is to specify the application requirements for obtaining an animal crematory license.
R3-11-1003	Renewing an Animal Crematory License: The objective of this rule is to specify the requirements for renewing an animal crematory license and the consequences of failing to renew timely.
R3-11-1004	Fees: The objective of the rule is to specify the fees the Board charges for its animal crematory licensing activities.
R3-11-1005	Minimum Standards for an Animal Crematory: The objective of this rule is to establish minimum facility standards for an animal crematory.
R3-11-1006	Minimum Operating Standards for an Animal Crematory: The objective of this rule is to establish minimum operating standards for an animal crematory.
R3-11-1007	Written Procedures Required: The objective of this rule is to require the responsible owner of an animal crematory establish and maintain written procedures regarding operation of the crematory.
R3-11-1008	Recordkeeping Requirements: The objective of this rule is to establish minimum recordkeeping requirements for the responsible owner of an animal crematory.
R3-11-1009	Change in Responsible Owner: The objective of this rule is to provide notice that a change in responsible owner of an animal crematory automatically cancels the license and a new license must be obtained by the new responsible owner of the animal crematory.
R3-11-1010	Change in Operator: The objective of this rule is to ensure the Board has current information regarding the operator of an animal crematory.

3. Are the rules effective in achieving their objectives? Yes

The Board believes the rules are effective in achieving the Board's statutory purpose to protect the public and its animals through licensure and regulation of the veterinary medical profession with exceptions as outlined in the following sections.

4. Are the rules consistent with other rules and statutes? Mostly, yes

It was determined that the majority of the rules reviewed are consistent with both statutes and other Board rules; however, there were some inconsistencies noted:

- A.R.S. § 32-2218(B) related to veterinary license renewal states: "Failure to pay the license fee before February 1 following expiration of the license shall be a forfeiture of the license…," which conflicts with R3-11-204(C). The rule states that "no later than February 1 of every odd-numbered year, a licensee shall submit to the Board in writing or through the Board's online renewal process:…" (requirements for renewal application). The statute states that the renewal must occur "before" February 1 (i.e., January 31st); however, the rule states "no later than February 1st," which would mean one could renew on February 1 or it would lapse on February 2nd.

- The rules contain detail for the license renewal of veterinarians (R3-11-204) and animal crematories (R3-11-1003) and certification of veterinary technicians (R3-11-607). However, there are no rules that require specific information or action for premises licenses (Article 7 discusses Veterinary Medical Premises. A.R.S. § 32-2272(E) covers premises license renewal requirements). The current rules do not consistently address various types of license renewals.

- R3-11-203(B) requires a veterinary applicant who is not a veterinary student at the time of application to cause a veterinary college transcript to be sent to the Board. However, a similar requirement is not included for those who qualify for licensure via the Educational Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE), which are alternative education pathways to licensure per ARS § 32-2215(A)(1). There is currently no rule requirement for ECVFG or PAVE graduates to submit proof of completion of their programs.

Because of statutory changes since the Board's rules were last amended, there are issues that need to be addressed in rule:

- In 2022, the legislature amended A.R.S. §§ 32-2215(A)(1), 32-2242(B), and 32-2248(1) along with the laws of other similar Boards to eliminate the requirement for there to be a

finding on whether an applicant is of good character or reputation, has integrity or is honest, moral, trustworthy or truthful to be eligible for a license, permit, certification.

- R3-11-203(C) and R3-11-203(D) need modifications.

- In 2019, the legislature amended A.R.S. §§ 32-3121 through 32-3124 allowing health profession regulatory boards to issue temporary licenses. Boards were authorized to adopt rules to establish an application and fee. As well, the legislation provided the Board with the discretion to grant authority to the Board's Executive Director to issue and approve licenses, certifications, registrations, reinstatements, or waivers to an eligible applicant or licensee. The Board's statutes and rules already provided for a similar Temporary Permit; therefore, no immediate action was taken. However, during the period where processes were changed to respond to COVID-related challenges, the Board granted approval authority to the Executive Director and began to issue Temporary Licenses via these laws, as they were less burdensome for the applicant than Temporary Permits. The current rules do not address Temporary Licenses.

5. Are the rules enforced as written? Mostly yes

Exceptions:

- R3-11-203(B): This requires a veterinary license applicant to cause a transcript from their veterinary college to be mailed to the Board office. Because many colleges now use vendors who only email transcripts or provide an online portal to retrieve them, the provision to have the documents mailed is not always possible. A transcript is still required; however, the Board allows them to be obtained via various methods as long as they are primary source documents. The rule needs to be modified to allow for alternate modalities for the submission of transcripts to the Board.

- R3-11-203(C) and R3-11-203(D): related to the license application requirement to include letters of character reference. As previously noted, legislative changes removed the authority to request moral character references. R3-11-203(C) needs to be removed and R3-11-203(D) needs modification.

- R3-11-203(A): This rule is related to documents required with a license application for those currently enrolled in veterinary college. It specifies that if the applicant is expected to graduate "within 45 days following the next administration of the examination," that a letter from the Dean's Office stating their expected graduation date is required. The 45-day time period is no longer enforced due to the Board's change in State Exam testing protocols. The State Exam was previously offered once per month in person; it is now emailed to the applicant shortly after the license application is deemed complete, which provides for a faster and more streamlined process.

- R3-11-403(6): Regarding the license renewal process, this subsection requires a licensee who obtains CE on the internet to submit a copy of a document issued by the provider that states the number of hours of CE obtained. Because it is not possible to upload documents in the Board's current online renewal system, this provision is unenforceable. However, the agency is in the process of developing an E-licensing system that is expected to allow this action; the new system is expected to launch in 2025.

- Please note that while some rules reflect outdated technology, such as "postmark" dates and lack of use of credit cards for online payments except license renewals, those rules are currently enforced. However, when the Board transitions to E-licensing expected in 2025, mailed letters pertaining to applications will be replaced by email and online portal notices and credit cards will be acceptable forms of payment for all items. These changes are expected to occur during the Board's development of its next rule package.

6. Are the rules clear, concise, and understandable? Mostly yes

- R3-11-401(C) related to the use of veterinary college coursework as credit towards Continuing Education (CE) requirements, is not clear. As written, the rule does not allow newly licensed veterinarians to use veterinary college coursework toward their CE requirements if they applied for licensure prior to graduation, which was not the Board's intention. The Board encourages application prior to graduation to allow students to begin work immediately after graduation. As written, this rule does not give the same opportunity to those who were proactive in the licensing process as those that waited until after graduation.

- R3-11-101, the definition of a "Mobile Unit," is not clear, as it relates to the unit being a "vehicle" from which out-patient services are provided to temporary sites. The manner in which the veterinarian transports themselves to the patient is not relevant. The Board's interpretation of "mobile unit" relates to the veterinary practice being mobile (e.g., housecall practice).

- R3-11-401(5) which explains that continuing education may be obtained at an interactive program, including an interactive program on the internet is not clear because the term "interactive" is not defined.

- R3-11-101(A) includes an incorrect citation of A.R.S. § 32-2281(E). The correct citation is A.R.S. § 32-2281(F).

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:
   The Board has completed no rulemaking since the Council approved the Board's last 5YRR on December 3, 2019, so there is no new economic, small business, and consumer impact estimate to assess. In the 5YRR approved on December 3, 2019, the Board indicated the economic impact of the rules was consistent with that projected when the rules were made. The Board has received no information causing it to change that conclusion.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR? No

    In the 2019 5YRR, the Board indicated several rules were in need of modification; however, over time, most were determined to be appropriately described in statute, with further detail in rule not needed for enforcement. The Board's intention was to limit the need for additional rules being created to lessen the burden on licensees.

    These were rules discussed in the 2019 5YRR:

    - Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.2 requiring health professionals, including veterinarians, authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-

related, or addiction-related continuing medical education during each license renewal cycle. The statute was determined to be detailed enough for enforcement without additional rules added.

- Under Laws 2019, Chapter 55, the legislature amended A.R.S. § 32-4302 regarding licensure of out-of-state applicants who establish residence in this state and military spouses who accompany the military member to this state. The statute was determined to be detailed enough for enforcement without additional rules added.

- Under Laws 2019, Chapter 195, the legislature added A.R.S. § 32-3124 regarding a temporary license for health professionals. As previously explained, the Board did not immediately find the need to utilize Temporary Licenses since the Board had the authority to issue a similar document, the Temporary Permit. However, due to changes caused by COVID-related challenges and changes in Board procedures, Temporary Licenses were determined to be less burdensome for both the applicant and the agency. The agency has been able to utilize Temporary Licenses without detailed rules based on the statute.

- Laws 2019, Chapter 195, also added A.R.S. § 32-3123 authorizing a health profession regulatory board to delegate certain licensing functions to the Board's Executive Director. At the time it was believed that the Board would need to establish rules establishing the parameters of the executive director's responsibility; however, the Board clarified the scope when voting to make that delegation to only include the approval of applications, licenses, reinstatements, renewals, and certificates. The Board does not find the need for additional rules on this topic.

- Under Laws 2019, Chapter 166, the legislature amended A.R.S. § 13-904 regarding suspension of civil rights and occupational disabilities. The amendment prohibits an agency from denying, except in certain circumstances, a license to an individual who has a criminal conviction that occurred more than seven years ago, excluding any time of incarceration. Upon further review, it was determined that the statute clearly defines the actions the Board may take and no rule additions were needed.

- The Board had previously determined that R3-11-807, relating to dispensing prescription-only drugs, may not be consistent with the USDA Pasteurized Milk Ordinance and Arizona

Board of Pharmacy rules. Upon further review, it was determined that current rules are appropriate and that no rule changes were needed.

- The Board had previously reviewed rules related to notarization requirements for documents (R3-11-201(A)(1), R3-11-606(A)(1), and R3-11-707(1)(a)). While the Board intends to integrate options to notarization, it does not yet have the technical capabilities built into its current online system to take advantage of those options; therefore, a rule change would have been premature. The Board intends to incorporate use of verified electronic documents from primary sources throughout the rules once the new E-licensing system is launched.

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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

Many of the costs of these rules, including paperwork and other compliance costs, to persons regulated by the rules result from statutory directives provided by the legislature. For example, it is statute that requires an individual to submit an application for licensure or certification (A.R.S. §§ 32-2213, 32-2242, 32-2271, and 32-2292); requires an applicant to take and pass an examination (A.R.S. §§ 32-2214 and 32-2242); requires license and certificate renewal every two years (A.R.S. §§ 32-2218, 32-2246, 32-2272, and 32-2292); requires that fees be paid (A.R.S. §§ 32-2219, 32-2250, 32-2273); and establish numerous grounds for disciplinary action (A.R.S. §§ 32-2233, 32-2249, 32-2274, and 32-2294).

The rules primarily provide guidance to an applicant or licensee regarding the procedure for complying with the statutory requirements for being qualified and making application for licensure and maintaining licensure. The rules also inform an applicant or licensee of the procedure used in the event disciplinary action is necessary. Because the rules simply implement statutory requirements, it is presumed the legislature determined the benefits of the requirements outweighed the costs and the requirements were the minimum necessary to protect the public, which is the underlying regulatory objective.

There are some rule provisions that impose a cost on persons regulated by the rules. For example, R3-11-201 requires that an application be notarized, fees are required to be paid by certified check or money order, documents must be assembled and submitted with an application, continuing education

is required and must be documented, standards of practice are specified, and certain minimal standards and procedures are required of owners of animal crematories. In each of these cases, the Board established the provision because the Board determined that doing so was necessary to protect public health and safety. The Board believes each provision is the minimum necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than federal law? No

    No federal law is uniquely applicable to these rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    The Board's statutes (See A.R.S. §§ 32-2213, 32-2215, 32-2272, and 32-2292), require individualized licenses be issued so a general permit is not applicable.

14. Proposed course of action:

    To address needed rule modifications, the Board intends to submit rulemaking to the Council by September 2025.

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

(Authority: A.R.S. § 32-2201 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 08-3).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, Articles 2, 3, 4, and 5) as specified in Laws 1989, Ch. 223, § 13. Exemption from A.R.S. Title 41, Chapter 6 means that the Veterinary Medical Examining Board did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Veterinary Medical Examining Board did not submit these rules to the Governor's Regulatory Review Council; the Veterinary Medical Examining Board was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

ARTICLE 3. TEMPORARY PERMITTEES

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

ARTICLE 5. STANDARDS OF PRACTICE

ARTICLE 6. VETERINARY TECHNICIANS

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

ARTICLE 8. DRUG DISPENSING

ARTICLE 9. INVESTIGATIONS AND HEARINGS

Article 9, consisting of Sections R3-11-901 through R3-11-905, adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 10. ANIMAL CREMATORY MINIMUM STANDARDS

Article 10, consisting of Sections R3-11-1001 through R3-11-1010, made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1).

ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-101. Definitions

A. The definitions in A.R.S. §§32-2201, 32-2216(B), 32-2231(D), 32-2232(23), and 32-2281(E) apply to this Chapter.

B. Additionally, in this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an individual has provided all of the information and documents required by A.R.S. §§ 32-2201 through 32-2296 and this Chapter for an application.
2. "Animal owner" means an individual who has all or part of the lawful right to an animal or an individual designated by the animal owner to act on the animal owner's behalf.
3. "Applicant" means an individual requesting a certificate, permit, license, or continuing education approval from the Board.
4. "Application packet" means the fees, forms, documents, and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
5. "Compartment" means an enclosure provided to contain an animal.
6. "Continuing education" means completing or presenting a workshop, seminar, lecture, conference, class, or instruction related to the:
   a. Practice of veterinary medicine if a veterinarian, or
   b. Work of a veterinary technician if a veterinary technician.
7. "Credit hour" means one clock hour of participation in continuing education.
8. "Current" means up to date and extending to the present time.
9. "Days" means calendar days.
10. "Direction, supervision, and control" means:
    a. Pertaining to veterinary technicians, the written or oral instructions of a veterinarian responsible for an animal; or
    b. Pertaining to temporary permittees, the same as direct and personal instruction, control, or supervision as stated in A.R.S. § 32-2216(B).
11. "Disciplinary action" means a proceeding brought by the Board under A.R.S. Title 32, Chapter 21 or this Chapter.
12. "ECFVG" means Educational Commission for Foreign Veterinary Graduates.
13. "Hours of operation" means the specific time during which a licensed veterinary medical premises is open to the public for business.
14. "Housed" means an animal is maintained in a compartment.
15. "Livestock" livestock and ratites as defined in A.R.S. §§ 3-1201 (5) and (10).
16. "Medication" means an over-the-counter drug defined in A.R.S. § 32-1901, prescription-only drug, prescription-only device defined in A.R.S. § 32-1901, or controlled substance.
17. "Mobile clinic" means a self-contained trailer, van, or mobile home not attached to the ground designed to function as a self-contained clinic.
18. "Mobile unit" means a vehicle from which out-patient veterinary medical services are delivered to temporary sites and that is not designed to function as a self-contained clinic.
19. "Over-the-counter drug" means the same as prescribed in A.R.S. § 32-1901.
20. "Party" means the same as prescribed in A.R.S. § 41-1001.
21. "PAVE" means Program for Assessment of Veterinary Education Equivalence.
22. "Personnel" means any individual, licensed by the Board or unlicensed, who works on a veterinary medical premises.
23. "Physical plant" means a building or an area within a building housing a licensed veterinary medical premise, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
24. "Prescription-only drug" means the same as prescribed in A.R.S. § 32-1901.
25. "RACE" means Registry of Approved Continuing Education and is a subdivision of the American Association of Veterinary State Boards.
26. "Sanitize" means to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
27. "Scientific meeting" means a live presentation of continuing education that is not provided at a veterinary college.
28. "Sharps container" means a puncture resistant, leak-proof container that can be closed and is used for handling, storing, transporting, and disposing of objects that may cut or penetrate skin or mucosa, such as needles, scalpel blades, or razor blades.
29. "Veterinary medical premise" means a physical plant licensed by the Board on which veterinary medical services will be performed.
30. "Veterinary medical services" means the acts listed in A.R.S. § 32-2201(27).

Historical Note

Former Rule 2; Former Section R3-11-02 repealed, new Section R3-11-02 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-02 renumbered as Section R3-11-102 and amended by adding subsections (C) and (D) effective February 24, 1988 (Supp. 88-1). Former Section R3-11-101 renumbered to R3-11-102, new Section R3-11-101 renumbered from R3-11-102 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the

Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-102. Board Meetings

The Board shall:

1. Hold its annual meeting in June of each year;
2. Make the date, time, and place of its annual meeting available to the public at least 20 days before the date of the annual meeting; and
3. Post notice of a special meeting on its web site and bulletin board at least 24 hours before the special meeting.

Historical Note

Former Rule 1; Former Section R3-11-01 repealed, new Section R3-11-01 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-01 renumbered without change as Section R3-11-101 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-102 renumbered to R3-11-101, new Section R3-11-102 renumbered from R3-11-101 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-103. Evaluating Board Services

Under A.R.S. § 32-2207(8)(c), a member of the public may evaluate the services provided by the Board by:

1. Submitting an evaluation form provided by the Board at the time services are provided.
2. Submitting comments through the Board's web site,
3. Submitting a letter to the Board, and
4. Attending and speaking at a Board meeting.

Historical Note

Former Rule 3; Former Section R3-11-03 repealed, new Section R3-11-03 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-03 repealed, new Section R3-11-03 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-03 renumbered without change as Section R3-11-103 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). R3-11-103 renumbered to R3-11-204; new Section R3-11-103 made by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-104. Premise License

The veterinary medical premise license shall be maintained in the premise for which it is issued.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-04 amended and renumbered as Section R3-11-104 effective February 24, 1988 (Supp. 88-1).

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. These rules were subsequently amended under the regular rulemaking process.

R3-11-105. Fees

A. Veterinarian fees are as follows:
1. Regular license application and state examination - $400.00
2. Specialty or endorsement application and state examination - $750.00
3. License issued in odd-numbered year - $200.00
4. License issued in even-numbered year - $100.00
5. License renewal - $400.00
6. Reinstatement penalty - $50.00
7. Duplicate license - $25.00
8. Temporary permit - $75.00
9. Verification licensure fee - $15.00

B. Veterinary technician fees are as follows:
1. Application and examination - $150.00
2. Certificate issued in odd-numbered year - $50.00
3. Certificate issued in even-numbered year - $25.00
4. Certificate renewal - $100.00
5. Delinquency fee authorized by A.R.S. § 32-2247 - $25.00
6. Duplicate certificate - $20.00

C. Veterinary medical premises fees are as follows:
1. License issued in odd-numbered year - $100.00
2. License issued in even-numbered year - $50.00
3. License renewal - $200.00
4. Duplicate license - $20.00
5. Penalty fee authorized by A.R.S. § 32-2272(E) - $100.00

D. Fees for the duplication or copying of public records under A.R.S. § 39-121.03 are nonrefundable and are as follows:
1. Noncommercial and commercial copy - $.25 per page
2. Copying requiring more than 15 minutes - $5.00 for each 15-minute interval exceeding 15 minutes
3. Directories for noncommercial use - $.05 per name and address
4. Directories for noncommercial use printed on labels - $.10 per name and address
5. Directories for commercial use - $.25 per name and address
6. Directories for commercial use printed on labels - $.30 per name and address
7. A directory in (3), (4), (5), or (6) issued on an electronic medium - $5.00 and the applicable name and address fee

E. During the pendency of a complaint, the Board shall not charge the veterinarian who is the subject of the complaint or the individual who has filed the complaint, for duplication of public records regarding the complaint.

F. The Board shall charge $5.00 per copy of the veterinary statutes and rules. A licensee may obtain one free copy of the veterinary statutes and rules each renewal period.

G. The Board shall charge $10.00 for each audio recording.

H. The Board shall waive the charges in subsection (D) for charitable organizations and government entities.

Historical Note

Former Rule 4; Former Section R3-11-04 repealed, new Section R3-11-04 adopted effective March 23, 1979 (Supp. 79-2). Amended effective February 12, 1980 (Supp. 80-1). Former Section R3-11-04 repealed, new Section R3-11-04 adopted effective Amended effective February 24, 1988 (Supp. 88-1). November 18, 1982 (Supp. 82-6). Renumbered as Section R3-11-05 effective April 26, 1984 (Supp. 84-2). Amended effective November 27, 1984 (Supp. 84-6). Former Section R3-11-05

amended and renumbered as Section R3-11-105 effective February 24, 1988 (Supp. 88-1). Amended subsection (B)(1) effective May 15, 1989 (Supp. 89-2). Amended effective August 31, 1995 (Supp. 95-3). Amended effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1384, effective June 4, 2006 (Supp. 06-2). Section amended by emergency rulemaking at 14 A.A.R. 3806, effective September 8, 2008, for 180 days (Supp. 08-3). Amended by final rulemaking at 14 A.A.R. 4398, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-106. Reserved

R3-11-107. Residence and Veterinary Practice Addresses

A. Within 20 days after the issuance of a license or certificate, a licensee or certificate holder shall provide written notice to the Board of all residence and veterinary practice addresses.

B. A licensee or certificate holder shall provide written notice to the Board within 20 days after a change of residence or veterinary practice address.

Historical Note

Section R3-11-07 adopted and renumbered as Section R3-11-107 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-108. Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The overall time-frame and the substantive time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.

1. The administrative completeness review time-frame begins:
   a. For approval or denial of a temporary permit, when the Board receives the written request for a temporary permit required under R3-11-301(A)(4);
   b. For approval or denial of a veterinary medical license, when the Board receives the application packet required under R3-11-201(A);
   c. For approval or denial of a veterinary technician certificate, when the Board receives the application packet required under R3-11-606(A);
   d. For approval or denial of a veterinary medical premises license, when the Board receives the application packet required under R3-11-707;
   e. For approval or denial of continuing education, when the Board receives the written request required under R3-11-402(B);
   f. For approval or denial of a waiver of the continuing education requirement, when the Board receives the written request required under R3-11-405(A);
   g. For approval or denial of an animal crematory license, when the Board receives the application packet required under R3-11-1002(B); and
   h. For approval or denial of a license or certificate renewal, when the Board receives a renewal application.
2. If an application packet or request submitted under subsection (B)(1) is incomplete, the Board shall send the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet or request from the applicant.
3. If an application packet or request is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
2. The Board shall send a written notice granting a license or other approval to an applicant who meets the qualifications and requirements in A.R.S. § 32-2201 through § 32-2296 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. § 32-2201 through § 32-2296 or this Chapter.

D. The Board shall consider an application withdrawn if, within 360 days from the date on which the materials required under subsection (B)(1) are submitted, the applicant fails to supply the missing information under subsection (B)(2) or (C)(1).

E. An applicant who does not wish an application withdrawn under subsection (D) may request a denial in writing within 360 days from the application submission date.

F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day will be considered the time-frame's last day.

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Table 1. Time-frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Temporary Permittee (R3-11-301)	Temporary Permit	A.R.S. § 32-2216	30	15	15
Veterinary License by Examination, Endorsement, for a Specialty License, or Temporary Permittee (R3-11-103, R3-11-201 & R3-11-301)	Veterinary License or Renewal	A.R.S. §§ 32-2212 and 32-2213	60	15	45
Veterinary Technician (R3-11-606 & R3-11-607)	Veterinary Technician Certificate or Renewal	A.R.S. §§ 32-2242 and 32-2244	60	30	30
Veterinary Medical Premises (R3-11-707)	Veterinary Medical Premises License or Renewal	A.R.S. §§ 32-2271 and 32-2272	90	30	60
Animal Crematory (R3-11-1002 & R3-11-1003)	Animal Crematory License or Renewal	A.R.S. § 32-2292	90	30	60
Licensee or certificate holder (R3-11-405)	Approval of a Continuing Education Waiver	A.R.S. § 32-2207(8)	60	30	30
Licensee Requesting Continuing Education Pre-approval (R3-11-402)	Pre-approval of Continuing Education	A.R.S. § 32-2207(8)	60	30	30

Historical Note
Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-109. Arizona Ombudsman-Citizens' Aide
The Board shall notify the public about the existence of the Arizona Ombudsman-Citizens' Aide by providing the ombudsman-citizens' aide's name, address, and telephone number on the Board's web site.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. These rules were subsequently repealed and new Section adopted under the regular rulemaking process.

R3-11-201. Application for a Veterinary Medical License

A. An applicant for a veterinary medical license shall submit an application packet to the Board that contains:
1. A notarized application form signed by the applicant that contains the information set forth in A.R.S. § 32-2213;
2. The documents required under R3-11-203; and
3. The applicable fees, payable by certified check or money order:
   a. If applying for a regular license, the applicant shall submit the application fee required in R3-11-105.
   b. If applying for a license by endorsement under A.R.S. § 32-2215(C) or a specialty license under A.R.S. § 32-2215(D), the applicant shall submit the application and license issuance fees required under R3-11-105.

B. If an applicant has passed the North American Veterinary Licensing Examination and is required to take only the state examination, the applicant shall submit the application packet required under subsection (A) no later than 30 days before the date the applicant intends to take the state examination.

C. If an applicant is required to take the North American Veterinary Licensing Examination, the applicant shall apply directly to the National Board of Veterinary Medical Examiners.

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-20 renumbered without change as Section R3-11-201 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-202. Repealed

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-21 amended and renumbered as Section R3-11-202 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-203. Documents Required with a License Application

A. An applicant who is a veterinary student at the time of application shall submit with the application packet required under R3-11-201(A) a letter from the office of the dean of the veterinary college stating that the applicant is expected to graduate within 45 days following the next administration of the examination required under A.R.S. § 32-2214(C).

B. An applicant who is not a veterinary student at the time of application shall cause a transcript verifying receipt of the degree of doctor of veterinary medicine to be mailed from the college directly to the Board.

C. At the time of application, an applicant shall cause letters of character reference to be sent directly to the Board by three persons who are not related to the applicant and who have known the applicant for at least three years.

D. At the time of application, an applicant who has experience in the field of veterinary medicine as a practicing veterinarian or as an employee of a licensed veterinarian shall cause a letter from a veterinarian indicating the professional qualifications and character of the applicant to be sent directly to the Board.

E. An applicant who has been or is at the time of application a licensed veterinarian in another state shall cause each state board that has licensed the applicant to send directly to the Board a letter indicating the applicant's standing, including whether the applicant is currently under investigation or ever has been disciplined for violation of a veterinary medical practice act.

F. Unless waived under A.R.S. § 32-2215(C) or (D), an applicant who has successfully passed the North American Veterinary Licensing Examination within five years before making application shall request that a transcript of the scores be forwarded to the Board directly by the organization responsible for score reporting or the professional examination service.

G. At the time of application, an applicant shall submit to the Board a passport-type photograph of the applicant no larger than 1 1/2 x 2 inches that was taken during the preceding six months.

H. At the time of application, an applicant shall submit to the Board a typewritten letter or current resume summarizing the applicant's experience and qualifications.

I. As required under A.R.S. § 41-1080(A), at the time of application, an applicant shall submit to the Board the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

Historical Note
Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-204. Renewal of Veterinary License

A. According to A.R.S. § 32-2218, a license issued under A.R.S. Title 32, Chapter 21 expires on December 31 of every even-numbered year unless renewed.

B. A licensee shall meet the continuing education requirements of Article 4 of this Chapter as a condition of renewal of a license.

C. No later than February 1 of every odd-numbered year, a licensee shall submit to the Board in writing or through the Board's online renewal process:

1. A renewal application, provided by the Board, that is signed and dated by the licensee and contains:
   a. The licensee's name, residence, mailing and veterinary practice addresses, name of veterinary practice, and telephone numbers for residence and veterinary practice;
   b. A statement of whether the licensee is licensed to practice veterinary medicine in any other state of the United States, and if so, the name of the state, license number, license issuance date, and status of the license;
   c. A statement of whether a complaint has been filed during the two-year period preceding the renewal date against the licensee with a veterinary regulatory authority in another state, and if so, the name of the state, and the date, description, and resolution of the complaint;
   d. A statement of whether the licensee is currently under investigation by a veterinary regulatory authority in another state, and if so, the name of the state, license number, and the nature and status of the investigation;
   e. A statement of whether, within the two-year period preceding the renewal date, any disciplinary action has been taken against the licensee's veterinary license in another state including:
      i. The name of the state;
      ii. The license number;
      iii. The reason for the disciplinary action;
      iv. Whether the disciplinary action is currently pending; and
      v. Whether the license has been suspended, revoked, or placed on probation;
   f. A statement of whether, within the two-year period preceding the renewal date, the licensee has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:
      i. The charged felony or misdemeanor;
      ii. The city, county, and state where the felony or misdemeanor took place;
      iii. The court having jurisdiction over the felony or misdemeanor;
      iv. Whether the charges were dismissed;
      v. If applicable, the date of the conviction;
      vi. Whether the conviction was set aside;
      vii. Notice of expungement, if applicable;
      viii. Notice of restoration of civil rights, if applicable; and
      ix. Probation officer's name, address, and telephone number, if applicable;
   g. A statement that the licensee has met the continuing education requirements in Article 4 of this Chapter; and
   h. A statement by the licensee that the information contained on the renewal application is true and correct;
2. The renewal fee required by the Board;
3. If the documentation previously submitted under R3-11-203(I) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and

4. A list of continuing education completed by the licensee that meets the requirements in Article 4 of this Chapter.

D. If a licensee fails to submit the materials required under subsection (C) by February 1 of every odd-numbered year, the licensee shall immediately stop engaging in the practice of veterinary medicine until the licensee complies with the requirements in A.R.S. § 32-2218 and this Chapter.

E. Continued veterinary practice by an individual who fails to comply with subsection (C) constitutes "probable cause" of criminal violation of A.R.S. § 32-2238(A)(4) for purposes of referral to the County Attorney's Office or the Office of the Attorney General for criminal prosecution, injunctive relief, or any other action provided by law.

Historical Note

New Section R3-11-204 renumbered from R3-11-103 and amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3)

ARTICLE 3. TEMPORARY PERMITTEES

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. These rules were subsequently repealed and new Section adopted under the regular rulemaking process.

R3-11-301. Application for a Temporary Permit

A. An applicant for a temporary permit shall:

1. Submit to the Board the application form required under R3-11-201(A)(1) and the documents required under R3-11-203;
2. Submit to the Board both the application and examination fee and temporary permit fee, payable by certified check or money order, required under R3-11-105;
3. Schedule with the Board a date to take the state examination;
4. After complying with subsections (A)(1) through (3), submit all of the following to the Board:
   a. A written request for a temporary permit, signed by the applicant, that states:
      i. The name and business address of the licensed veterinarian who will employ the applicant; and
      ii. The name of each licensed veterinarian who will provide direct and personal instruction, control, or supervision of the applicant;
   b. Written documentation of graduation from a veterinary college; and
   c. A sworn affidavit, signed by the applicant, stating the applicant:
      i. Has graduated from a veterinary college;
      ii. Has read and understands A.R.S. § 32-2216 and this Section;
      iii. Agrees to work under the direct and personal instruction, control, or supervision of the licensed veterinarian employing the applicant; and
      iv. Agrees to notify the Board in writing within 10 days from the date of termination of employment.

B. A licensed veterinarian employing an applicant for a temporary permit shall submit to the Board:

1. A letter detailing:
   a. The type of work to be conducted by the applicant;
   b. The name of each licensed veterinarian who will assume direct and personal instruction, control, or supervision when the employing veterinarian is absent; and
   c. The procedures, including frequency, for reviewing medical treatment and records of medical treatment of animals;
2. A sworn affidavit, signed by the veterinarian, stating the veterinarian:
   a. Is currently practicing veterinary medicine in Arizona;
   b. Has read and understands A.R.S. § 32-2216 and this Section;
   c. Accepts full responsibility for providing direct and personal instruction, control, or supervision to the applicant; and
   d. Agrees to notify the Board in writing within 10 days from the date of termination of applicant's employment.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-30 renumbered without change as Section R3-11-301 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-302. Repealed

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-31 renumbered without change as Section R3-11-302 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3).Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Repealed by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-303. Repealed

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-32 renumbered without change as Section R3-11-303 effective February 24, 1988 (Supp. 88-1).Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Repealed by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3).

R3-11-304. Extension of Temporary Permits

A. The Board shall extend a temporary permit as allowed by A.R.S. § 32-2216(B), only if the temporary permittee submits to the Board evidence of good and sufficient reason for failing to take the scheduled state examination and evidence that the temporary permittee is scheduled to take the next state examination following issuance of the extension.

B. As provided under A.R.S. § 32-2216(B), the Board shall not extend a temporary permit a second time.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-33 renumbered without change as Section R3-11-304 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective

September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination

For purposes of A.R.S. § 32-2216(B), the Board shall consider the following in determining whether "good and sufficient reason" exists for failure to take a state examination:

1. Illness or disability,
2. Military service, or
3. Any other circumstance demonstrated by the temporary permittee to be beyond the temporary permittee's control.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-34 renumbered without change as Section R3-11-305 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

A. Except as provided in subsection (B), during the two-year period preceding license expiration, a licensee shall complete 20 credit hours of Board-approved continuing education, subject to the following:
1. A maximum of two credit hours in practice management;
2. One credit hour for each hour of attendance at a veterinary college seminar;
3. One credit hour for each hour of attendance at a scientific meeting related to veterinary medicine;
4. One credit hour, to a maximum of five, for:
   a. Each hour spent developing or making a presentation related to veterinary medicine,
   b. Each hour of study using tapes or CDs, and
   c. Each hour spent reading articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
5. One credit hour for each hour of continuing education obtained at an interactive program, including an interactive program on the internet.

B. A licensee receiving an initial license in an even-numbered year shall complete 10 credit hours of continuing education before the licensee's initial renewal date.

C. If a licensee graduated from a veterinary college within 11 months before the license application date, the licensee may apply 10 credit hours of veterinary college course work to fulfill the continuing education requirement at the time of first renewal.

D. Except as provided in subsection (E), during the two-year period preceding certificate expiration, a certificate holder shall complete 10 credit hours of Board-approved continuing education, subject to the following:
1. One credit hour for each hour of attendance at a veterinary college seminar;
2. One credit hour for each hour of attendance at a class at a veterinary technology school;
3. One credit hour for each hour of attendance at a scientific meeting related to the work of a veterinary technician;
4. One credit hour, to a maximum of two and one-half, for:
   a. Each hour spent developing or making a presentation related to the work of a veterinary technician;
   b. Each hour of study using tapes or CDs; and
   c. Each hour spent reading articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
5. One credit hour for each hour of continuing education obtained at an interactive program, including an interactive program on the internet.

E. A certificate holder receiving an initial certificate in an even-numbered year shall complete five credit hours of continuing education before the certificate holder's first renewal date.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-40 repealed, new Section R3-11-40 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-40 renumbered as Section R3-11-401 and subsection (A) amended effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-402. Approval of Continuing Education

A. The following continuing education is approved by the Board:
1. For a veterinarian:
   a. Continuing education taught in or under the authority of a veterinary college;
   b. Continuing education sponsored by the Arizona Veterinary Medical Association, American Association of Veterinary State Boards, a state or national veterinary association or academy approved by the Board, or continuing education approved according to subsections (B) and (C); or
   c. Continuing education approved by RACE;
2. For a veterinary technician:
   a. Continuing education taught in or under the authority of a veterinary technician school or school of veterinary medicine;
   b. Continuing education sponsored by the Arizona Veterinary Medical Association or American Association of Veterinary States Boards or approved by RACE;
   c. Continuing education approved by the Board that is sponsored by a state or national veterinary technician association or academy;
   d. Continuing education approved by RACE of the American Association of Veterinary State Boards; or
   e. Continuing education approved according to subsections (B) and (C).

B. In addition to the continuing education approved according to subsection (A), a person who provides continuing education may request pre-approval of continuing education by submitting to the Board at least 60 calendar days before the continuing education takes place, a written request that includes:
1. A description of the continuing education;
2. The date, time, and place where the continuing education will take place;
3. The number of credit hours of the continuing education;
4. The name of each individual providing the continuing education, if available; and
5. The name of the organization providing the continuing education, if applicable.

C. In determining whether to approve a request for pre-approval submitted according to subsection (B), the Board shall consider whether the continuing education:

1. Is designed to provide instruction or knowledge in current developments, skills, and procedures related to veterinary medicine or work of a certificate holder;
2. Is developed and provided by an individual with knowledge and experience in the subject area; and
3. Contributes directly to the professional competence of the licensee or certificate holder.

D. The Board shall approve or deny a request for pre-approval according to the time-frames set forth in Table 1.

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-41 renumbered without change as Section R3-11-402 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-403. Documentation of Attendance
A licensee or certificate holder shall submit a written document of continuing education with a renewal application that includes:

1. The name of the licensee or certificate holder;
2. The title of each continuing education;
3. The date of completion of each continuing education;
4. The number of credit hours of each continuing education;
5. A statement, signed and dated by the licensee or certificate holder, verifying the information in the document; and
6. If the continuing education was obtained on the internet, a copy of a document issued by the provider of the continuing education that states the number of hours obtained.

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-42 repealed, new Section R3-11-42 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-42 renumbered without change as Section R3-11-403 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-404. Repealed

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-43 renumbered without change as Section R3-11-404 effective February 24, 1988 (Supp. 88-1). Section repealed by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-405. Waiver

A. A licensee or certificate holder seeking a waiver from the continuing education requirements in this Article shall submit a written request to the Board by December 10th before the license or certificate expires that contains the licensee's or certificate holder's name and an explanation of the reason for the request.

B. The Board shall consider the following in determining whether to grant a waiver from the continuing education requirements in this Article:

1. Illness or disability,
2. Military service or absence from the United States, or
3. Any other circumstance demonstrated by the licensee or certificate holder to be beyond the licensee's or certificate holder's control.

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-44 renumbered without change as Section R3-11-405 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 5. STANDARDS OF PRACTICE

R3-11-501. Ethical Standards
Under A.R.S. § 32-2232(12), a veterinarian practicing under a license or permit shall practice according to the following standards of professional ethics, which are based on the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association.. The breach of any of the following standards constitutes grounds for disciplinary action against a veterinary license or permit under A.R.S. §§ 32-2233 and 32-2234.

1. A veterinarian shall show respect for the veterinarian's colleagues, the owner of an animal to whom veterinary medical services are being provided, and the public through courteous verbal or written interchange, considerate treatment, professional appearance, professionally acceptable procedures, and use of current professional and scientific knowledge.
2. A veterinarian shall not slander or injure the professional standing or reputation of another member of the profession or condemn the character of that individual's professional acts in a false or misleading manner.
3. A veterinarian shall offer or seek a consultation or a referral whenever it appears that the quality of veterinary medical service provided by the veterinarian will be enhanced.
4. When a veterinarian agrees to provide veterinary medical services to an animal, the veterinarian shall comply with the standards of practice in R3-11-502 regardless of the fees charged.
5. A Responsible Veterinarian employed by a partnership, corporation, or individual that is not licensed by the Board shall ensure that the veterinary judgment and responsibility of each veterinarian employed by the partnership, corporation, or individual is neither influenced nor controlled by the partnership, corporation, or individual to the detriment of an animal.
6. A veterinarian shall ensure that emergency services are consistent with A.R.S. § 32-2201 through § 32-2296, this Chapter, and the needs and standards of the locality where the emergency medical services are provided.

7. A veterinarian is free to choose whom the veterinarian will serve within the limits of the law. A veterinarian who agrees to provide veterinary medical services to an animal is responsible for the welfare of the animal until the animal is released, referred, or discharged by the veterinarian or the veterinarian is dismissed by the animal owner.
8. A veterinarian shall provide records or copies of records of veterinary medical services, including copies of radiographs, to an animal owner or another licensed veterinarian currently providing veterinary medical services within 10 days from the date of the animal owner's or other licensed veterinarian's request, or in less than 10 days if the animal's medical condition requires.
9. A veterinarian shall not make a false statement on or alter any document, record, or report concerning treatment of an animal.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-50 renumbered without change as Section R3-11-501 effective February 24, 1988 (Supp. 88-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-502. Standards of Practice

A. Before providing a veterinary medical service or housing an animal, a Responsible Veterinarian shall ensure that the animal owner is provided a written notice that states whether personnel will be present on the veterinary medical premises for 24-hour observation of the animal.

B. A Responsible Veterinarian shall ensure that a notice of where veterinary medical services may be obtained when the veterinary medical premises is not open for business:
1. Is placed on the voice mail of the veterinary medical premises; and
2. Contains the name, telephone number, and address of a veterinarian or veterinary medical premises that is available to provide veterinary medical services. Livestock veterinarians are exempt from providing an address.

C. Before providing a veterinary medical service, a veterinarian shall ensure that the animal owner or the animal owner's agent is provided an estimate of the cost for the veterinary medical service, except in the case of livestock.

D. When providing a veterinary medical service, a veterinarian shall ensure that no expired supplies are used.

E. Before a surgical patient or hospitalized animal is discharged, a veterinarian shall ensure that the animal owner is provided with instructions detailing care of the animal after discharge and documents in the medical record that verbal or written care instructions were provided.

F. Before euthanizing an animal for which the animal owner is known, a veterinarian shall obtain signed authorization from the animal owner or verbal authorization from the animal owner that is witnessed by one other individual and documented in the medical record.

G. For animals with a suspected or diagnosed contagious disease or illness, a veterinarian shall provide a separate isolation area that is not in close proximity to other animals and shall ensure that the ill animal does not come into contact with another animal or the other animal's compartment.

H. If general anesthesia is administered or surgery is performed on an animal by a veterinarian, the veterinarian shall ensure:
1. A prior signed authorization is obtained from the animal owner if the animal owner is known or verbal authorization that is witnessed by one other individual and documented in the medical record is obtained from the known animal owner. This provision does not apply to livestock;
2. Within six hours before anesthesia is administered or surgery is performed, the animal is examined and the animal's temperature, heart rate, respiratory rate, diagnosis, and general condition are recorded in the animal's medical record except for species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;
3. The animal's heart rate and respiratory rate are recorded in the animal's medical record immediately after giving the animal a general anesthetic and monitored and recorded a minimum of every 15 minutes while anesthesia is being administered except for species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;
4. After the animal is given a general anesthetic, the animal is continuously observed by personnel until the animal is extubated and able to swallow; and
5. The following information is recorded in a written anesthesia log, which is separate from both the controlled drug log maintained under subsection (K) and medical record of each animal maintained under subsection (L) and is maintained on the veterinary medical premises for three years from the date the anesthesia is administered:
   a. The animal's name and species,
   b. The name of the animal owner,
   c. The date of administration of the anesthesia,
   d. The recovery status of the animal, and
   e. The name of the veterinarian.

I. A veterinarian shall follow manufacturer's label requirements for the storage and handling of biologics, veterinary supplies, and veterinary medications.

J. A veterinarian who dispenses a prescription-only drug shall:
1. Comply with all federal and state laws, including A.A.C. Title 3, Chapter 11, Article 8, regarding the dispensing of a prescription-only drug; and
2. Ensure that a prescription-only drug or prescription-only device is destroyed or returned to the manufacturer or distributor no later than 30 days after its expiration date.

K. A veterinarian who dispenses or administers a controlled substance shall:
1. Comply with all federal and state laws including A.A.C. Title 3, Chapter 11, Article 8;
2. Maintain an inventory record on the veterinary medical premises for two years from the date of entry of each controlled substance purchased by the veterinarian that contains the:
   a. Name of the controlled substance,
   b. Strength of the controlled substance,
   c. Date the controlled substance was received by the veterinarian,
   d. Amount of the controlled substance received by the veterinarian,
   e. Name of the distributor of the controlled substance, and
   f. Invoice number; and
3. Maintain a dispensing or administration log on the veterinary medical premises, separate from the inventory

record required under subsection (K)(2), for two years from the date of entry that contains for each controlled substance dispensed or administered the:
a. Name of the controlled substance,
b. Strength of the controlled substance,
c. Amount of the controlled substance,
d. Name of the animal to which dispensed or administered,
e. Name of the animal owner,
f. Date dispensed or administered,
g. Name of the veterinarian who dispensed or administered the controlled substance, and
h. Decremented amounts of the controlled substance quantifying the amount remaining.

L. Except as provided in subsection (N), a veterinarian shall maintain on the veterinary medical premises for three years after the last date an animal receives veterinary medical services a written medical record containing the:
1. Name, address, and telephone number of the animal owner;
2. Description of the animal's color and markings or a color photograph of the animal, and the sex, breed, weight, and age of the animal;
3. Date of veterinary medical services and date a written entry is made to the medical record, if the entry is made on a date other than when the veterinary medical services were provided;
4. Results of examination, including temperature, heart rate, respiratory rate, and general condition of the animal, except for livestock and species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;
5. The animal's tentative or definitive diagnosis;
6. Treatment provided to the animal;
7. Name of each medication administered including:
   a. Concentration, except when the medication is only offered in one size and strength;
   b. Amount;
   c. Frequency; and
   d. Route of administration;
8. Name of each medication prescribed including concentration, amount, and frequency;
9. Name and result of each diagnostic and laboratory test conducted;
10. Signature or initials of each individual placing an entry in the medical record; and
11. Signature or initials of the veterinarian performing the veterinary medical services.

M. A veterinarian shall ensure that a radiograph of an animal is permanently labeled with the following information and maintained on the veterinary medical premises for three years from the last date an animal receives veterinary medical services:
1. The name of the animal owner,
2. The name of the animal,
3. The date the radiograph was taken,
4. The name of the veterinarian or veterinary medical premises, and
5. The anatomical orientation.

N. A veterinarian who administers a rabies vaccine to an animal on behalf of an animal control agency or animal shelter and provides no other veterinary medical service to the animal:
1. Is exempt from the requirements of subsection (L);
2. Shall generate a rabies vaccination record for each animal vaccinated that includes:
   a. The name and address of the animal owner;
   b. A description or color photograph of the animal that includes species, breed, sex, age, and color;
   c. The date of vaccination;
   d. The vaccine manufacturer's name;
   e. The serial number of the vaccine used;
   f. The date re-vaccination is due; and
   g. The veterinarian's signature; and
3. Shall provide a copy of each rabies vaccination record to the veterinary medical premises, animal control agency, or animal shelter at which the rabies vaccination was provided. If a copy of the rabies vaccination record is provided to the veterinary medical premises, the veterinary medical premises shall maintain the record for at least three years from the date of vaccination.

O. In this Section, 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 is responsible for controlling rabies in animals in a specific geographic area.
2. *"Animal shelter" means a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals or other nonprofit corporate organization devoted to the welfare, protection and humane treatment of animals.* A.R.S. § 11-1022(H).

Historical Note
Adopted effective February 24, 1988 (Supp. 88-1). Section R3-11-51 adopted and renumbered as Section R3-11-502 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Section amended by final rulemaking at 11 A.A.R. 448, effective March 5, 2005 (05-1). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-503. Repealed

Historical Note
Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-52 renumbered as Section R3-11-503 and subsections (B) and (D) amended effective February 24, 1988 (Supp. 88-1). Section repealed by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 6. VETERINARY TECHNICIANS

R3-11-601. Repealed

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-60 renumbered without change as Section R3-11-601 effective February 24, 1988 (Supp. 88-1). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Section repealed by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-602. Repealed

Historical Note
Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-61 renumbered without change as Section

R3-11-602 effective February 24, 1988 (Supp. 88-1). Repealed effective August 31, 1995 (Supp. 95-3).

R3-11-603. Examination Committee

The Board may appoint a committee of Arizona licensed veterinarians and certified veterinary technicians to assist the Board to prepare and administer examinations of applicants for veterinary technician certificates. An examination recommended by the examination committee is subject to the approval of the Board.

Historical Note

Adopted effective February 12, 1980 (Supp. 80-1). Former Section R3-11-62 renumbered without change as Section R3-11-603 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-604. Examinations

A. The Board shall hold a veterinary technician examination at least once a year. A minimum of 20 days before the examination, the Board shall send an applicant a written notice of the date, time, and place of the examination.

B. An applicant shall pass a national veterinary technician examination and an Arizona veterinary technician examination with a score of at least 70 percent on each examination before being certified by the Board.

C. An applicant with a passing score on either the national veterinary technician examination or the Arizona veterinary technician examination shall retake the examination if the applicant does not obtain certification within five years after the date of the examination.

D. An applicant who meets all the requirements in A.R.S. § 32-2242(D) is not required to retake the national veterinary technician examination. However, an applicant who meets all the requirements in A.R.S. § 32-2242(D) shall pass the Arizona veterinary technician examination within five years before obtaining certification.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-63 renumbered without change as Section R3-11-604 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-605. Certified Veterinary Technician Services

A. Except as provided in subsection (B), a certified veterinary technician may perform the tasks delegated by a licensed veterinarian while under the direction, supervision, and control of the licensed veterinarian.

B. A certified veterinary technician shall not:
1. Perform surgery,
2. Diagnose,
3. Prescribe a medication, or
4. Provide a prognosis.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-64 renumbered without change as Section R3-11-605 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-606. Application for a Veterinary Technician Certificate

A. Except as provided in subsection (B), an applicant for a veterinary technician certificate shall submit, at least 65 days before an examination date, an application packet to the Board that contains:
1. A notarized application form, signed by the applicant, containing:
   a. The applicant's name, mailing address, residence and business telephone numbers, and Social Security number;
   b. The name of the veterinarian currently employing applicant, if employed by a veterinarian;
   c. The name and address of the veterinary premises where applicant is employed, if employed; and
   d. A statement of whether application is being made on the basis of education or transfer from another state:
      i. If application is based on education, the applicant shall submit written documentation of graduation from a school that meets the requirements in A.R.S. § 32-2242(B) with a curriculum in veterinary technology; or
      ii. If application is based on transfer from another state, the applicant shall submit the information required in (A)(1)(d)(i) and proof required under A.R.S. § 32-2242(D);
2. If an applicant has passed a national veterinary technician examination, the applicant shall provide the date on which the applicant took the examination and arrange to have an official transcript of the applicant's scores from the national veterinary technician examination sent directly to the Board by the American Association of Veterinary State Boards;
3. An applicant who has been or is at the time of application certified or registered in another state as a veterinary technician shall cause each state board that has certified or registered the applicant to send directly to the Board a letter indicating the applicant's standing, including whether the applicant is currently under investigation or has ever been disciplined for violation of a veterinary technician or medical practice act;
4. As required under A.R.S. § 41-1080(A), an applicant shall submit to the Board the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
5. A certified check or money order for the application and examination fee required in R3-11-105.

B. A veterinary technician student who expects to graduate at least 30 days before an examination date shall submit to the Board, no later than 65 days before the examination date, the application required under subsection (A) and rather than the documentation required under subsection (A)(1)(d)(i), a letter from the dean of the school that indicates the applicant is in good standing and states the expected date of graduation.

C. A veterinary technician student who submits an application under subsection (B) shall submit to the Board the documentation required under subsection (A)(1)(d)(i) no later than 15 days following the date of graduation.

Historical Note
Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Editor's Note: The following Section was amended under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. These rules were subsequently repealed and new Section adopted under the regular rulemaking process.

R3-11-607. Renewal of Veterinary Technician Certificate

A. No later than February 1 of every odd-numbered year, a certificate holder shall submit:
1. A signed and dated renewal application form, which is provided to the certificate holder by the Board, containing the following information:
   a. The certificate holder's name, residence address, work address, and work telephone number;
   b. A statement of whether, within the two-year period preceding the renewal date, the certificate holder has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:
      i. The charged felony or misdemeanor;
      ii. The city, county, and state where the felony or misdemeanor took place;
      iii. The court having jurisdiction over the felony or misdemeanor;
      iv. Whether the charges were dismissed;
      v. The date of the conviction;
      vi. Whether the conviction was set aside;
      vii. Notice of expungement, if applicable;
      viii. Notice of restoration of civil rights, if applicable; and
      ix. Probation officer's name, address, and telephone number, if applicable; and
   c. A statement by the certificate holder that the information contained on the renewal form is true and correct.
2. The written documentation of continuing education required under R3-11-403;
3. If the documentation previously submitted under R3-11-606(A)(4) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
4. The fee required by the Board under R3-11-105.

B. A certificate holder who fails to submit the certificate renewal fee and information required under subsection (A) before February 1 of every odd-numbered year:
1. Forfeits all privileges and rights extended by the certificate, and
2. Shall immediately cease performing veterinary technician services until the certificate holder:
   a. Complies with the requirements of subsection (A), and
   b. Pays the delinquency fee required under R3-11-105 in addition to the certificate renewal fee.

Historical Note
Adopted effective November 18, 1982 (Supp. 82-6). Amended subsection (C) effective November 27, 1984 (Supp. 84-6). Former Section R3-11-66 renumbered without change as Section R3-11-607 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

R3-11-701. General Veterinary Medical Premises Standards

A Responsible Veterinarian shall ensure that:
1. The physical plant of a veterinary medical premises conforms to state and local building and fire codes and local zoning requirements;
2. A veterinary medical premise's identification is visible to the public from the outside of its physical plant. The identification includes the hours of operation and shall be placed so that it is unobstructed from public view. If the hours of operation include hours after dusk, a means of illuminating the sign shall be provided and used during the hours of operation after dusk;
3. Floors, tables, countertops, sinks, and fixtures within the veterinary medical premises are made of nonporous materials that can be sanitized.
4. Water and a means of achieving water temperatures from 32°F to 212°F is provided on the veterinary medical premises;
5. Refrigerated storage space, large enough to contain all deceased animals except livestock, is provided on the veterinary medical premises, pending necropsy and disposal pick-up or, in the case of a mobile unit, if requested by the client, arrangements are made for disposal of the body, except livestock;
6. Storage space is provided on the veterinary medical premises for biohazardous medical waste pending disposal pick-up;
7. If animals, other than livestock, will be housed on a veterinary medical premises, an individual compartment, equipped with a latch, for each animal housed on the veterinary medical premises is provided;
8. A sharps container is provided on the veterinary medical premises; and
9. A working scale is provided at the veterinary medical premises for use with animals other than livestock.

Historical Note
Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-70 renumbered without change as Section R3-11-701 effective February 24, 1988 (Supp. 88-1). Section repealed, new Section R3-11-701 renumbered from R3-11-702 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-702. Equipment and Supplies

A Responsible Veterinarian shall ensure that equipment and supplies are available on the veterinary medical premises of an adequate number and type to provide the veterinary medical services that are offered at the veterinary medical premises.

Historical Note

Section R3-11-71 adopted and renumbered as Section R3-11-702 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-702 renumbered to R3-11-701, new Section R3-11-702 adopted effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-703. Maintenance Standards for a Veterinary Medical Premises

A Responsible Veterinarian shall ensure that:

1. All exits, corridors, and passageways inside and outside the veterinary medical premises are unobstructed at all times;
2. Combustible material such as paper, boxes, and rags are not allowed to accumulate inside or outside the veterinary medical premises;
3. Temperatures are maintained between 65°F and 90°F in each room where an animal, other than livestock, is treated or housed;
4. Floors, countertops, tables, sinks, and any other equipment or fixtures used in a veterinary medical premises are maintained in a clean condition and sanitized after contact with an animal or animal tissue; and
5. Animal compartments are cleaned and sanitized at least once every 24 hours when an animal, other than livestock, is being housed and after each animal, other than livestock, vacates the compartment.

Historical Note

Renumbered from R3-11-704 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-704. Surgical Equipment

In addition to complying with the requirements in this Article, if surgery is performed on a veterinary medical premises, a responsible veterinarian shall ensure that the following is provided on the veterinary medical premises:

1. Caps, masks, and sterile gloves and gowns;
2. Sterile surgical packs, including:
   i. Drapes;
   ii. Sponges; and
   iii. Surgical instruments necessary to perform a surgical procedure;
3. An oxygen tank that contains oxygen sufficient for each animal to whom general anesthesia is administered;
4. A means of administering anesthesia for each animal that will receive general anesthesia;
5. A fixed or portable surgical light to illuminate the surgical site; and
6. A light for use if the surgical light will not operate.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-73 amended and renumbered as Section R3-11-704 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-704 renumbered to R3-11-703, new Section R3-11-704 renumbered from R3-11-705 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-705. Mobile Clinics

A. Except for R3-11-701(1), R3-11-701(2), R3-11-701(5), and R3-11-701(6) the application process and standards contained in this Article apply to mobile clinics.

B. A Responsible Veterinarian shall ensure that a mobile clinic has:

1. An electrical power source;
2. Storage space for biohazardous waste pending disposal pick-up; and
3. Storage space, separate from storage space in subsection (B)(2), for the transportation of a deceased animal.

Historical Note

Section R3-11-74 adopted and renumbered as Section R3-11-705 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-705 renumbered to R3-11-704, new Section R3-11-705 renumbered from R3-11-706 effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-706. Mobile Units

A Responsible Veterinarian shall:

1. Ensure that controlled substances and prescription-only drugs are maintained accessible only to authorized personnel,
2. Meet manufacturer's label requirements for the storage and handling of biologics and veterinary supplies and medications requiring temperature control, and
3. Maintain sterile surgical supplies and equipment.

Historical Note

Section R3-11-75 adopted and renumbered as Section R3-11-706 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-706 renumbered to R3-11-705, new Section R3-11-706 renumbered from R3-11-707 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-707. Application for a Veterinary Medical Premises License

An applicant for a veterinary medical premises license shall:

1. Submit the following to the Board:
   a. A notarized application form, signed by the Responsible Veterinarian, that contains the information set forth in A.R.S. § 32-2272; and
   b. The fee required in R3-11-105, payable by certified check or money order; and
2. Pass an inspection conducted by the Board.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-76 renumbered without change as Section R3-11-707 effective February 24, 1988 (Supp. 88-1). Renumbered to R3-11-706 effective August 31, 1995 (Supp. 95-3). New Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 8. DRUG DISPENSING

Editor's Note: The following Section was adopted under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May Be Available at a Pharmacy

A. A dispensing veterinarian shall notify an animal owner that some prescription-only drugs and controlled substances may be available at a pharmacy by:
1. Stating the availability at or before the time of dispensing;
2. Posting a written statement that is visible to the animal owner; or
3. Providing the animal owner with written notification.

B. A dispensing veterinarian may provide a written, electronic, or telephonic prescription if requested by an animal owner and the dispensing veterinarian:
1. Has a valid doctor-patient relationship with the animal, and
2. Determines that providing the prescription is in the best interest of the animal.

Historical Note
Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Editor's Note: The following Section was adopted under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-802. Labeling Requirements

A veterinarian shall dispense a prescription-only drug or a controlled substance in a container bearing a legible label that sets forth all of the information required under A.R.S. § 32-2281(A)(1).

Historical Note
Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-803. Packaging Requirements

A. A veterinarian shall dispense four ounces or less of a prescription-only drug in a childproof container unless the animal owner waives this requirement.

B. A veterinarian shall dispense a controlled substance in a childproof container.

C. A veterinarian may dispense more than four ounces of a bulk prescription-only drug in a non-childproof container.

D. A veterinarian may dispense a prescription-only drug in the manufacturer's original dispensing package without repackaging the prescription-only drug in a child-proof container.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).

R3-11-804. Reserved

R3-11-805. Storage

A. A dispensing veterinarian shall store controlled substances under lock and key except for controlled substances that are authorized by a responsible veterinarian to be administered by personnel.

B. A dispensing veterinarian shall store prescription-only drugs in an area to which members of the public are not allowed access unless accompanied by a veterinarian or a member of the veterinarian's staff.

C. A dispensing veterinarian shall store prescription-only drugs and prescription-only devices in compliance with state and federal laws and in compliance with the manufacturer's requirements.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).

R3-11-806. Reserved

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

A. When dispensing a controlled substance:
1. A dispensing veterinarian or personnel who are not veterinarians but who are authorized by a veterinarian may:
   a. Select the controlled substance,
   b. Count the quantity of the controlled substance, and
   c. Place the controlled substance in a prescription container.
2. Licensed or unlicensed personnel may:
   a. Prepare labels,
   b. Prepare drug containers for controlled substances, or
   c. Record information required by state and federal laws.
3. A dispensing veterinarian shall review the label of a repackaged controlled substance and the patient's medical record and ensure that the label complies with R3-11-502 and state and federal laws before the controlled substance is dispensed.

B. When dispensing a prescription-only drug:
1. A dispensing veterinarian or personnel who are not veterinarians but who are authorized by a veterinarian may:
   a. Repackage prescription-only drugs,
   b. Prepare labels,
   c. Prepare containers for prescription-only drugs, or
   d. Record information required by state or federal laws.
2. The dispensing veterinarian authorizing the dispensing shall ensure that records are maintained according to R3-11-502(K) and R3-11-502(L) and all state and federal laws are followed.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4).

ARTICLE 9. INVESTIGATIONS AND HEARINGS

R3-11-901. Investigations of Alleged Violations

A. A person may notify the Board of an alleged violation of A.R.S. §§ 32-2201 through 32-2296 and this Chapter. The Board also may initiate a complaint on its own motion.

B. The Board shall send a written notice to the licensee or certificate holder who is the subject of a complaint. The licensee or certificate holder shall provide a written response and all relevant records or documents concerning the complaint if requested by the Board, no later than 15 days from the date of the notice. If a medical record is relevant to the complaint, the licensee or certificate holder shall ensure that the version of the medical record provided to the Board is typewritten.

C. The Board may request the licensee or certificate holder to reply to any statements or documents the Board receives concerning a complaint. If the Board requests the licensee or certificate holder to provide the Board with additional information concerning a complaint, the licensee or certificate holder shall respond in writing within 15 days from the date of the request.

D. The Board may request the complainant and other witnesses or the licensee or certificate holder to appear before the Board to assist in the Board's investigation.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-902. Informal Interview

A. The Board shall conduct an informal interview under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 as follows:

1. The Board shall send a written notice of the informal interview to the licensee or certificate holder by personal service or certified mail, return receipt requested, at least 20 days before the informal interview. The Board shall ensure that the notice contains:
   a. The time, place, and date of the informal interview;
   b. An explanation of the informal nature of the interview;
   c. A statement of the subject matter or issues involved;
   d. The licensee's or certificate holder's right to appear with or without the assistance of an attorney;
   e. A notice that if a licensee or certificate holder fails to appear at the informal interview, the informal interview may be held in the licensee's or certificate holder's absence; and
   f. The licensee's or certificate holder's right to a formal hearing held according to A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294.
2. During the informal interview:
   a. The Board may:
      i. Swear in the licensee or certificate holder and all witnesses;
      ii. Question the licensee or certificate holder and all witnesses; and
      iii. Deliberate.
   b. The licensee or certificate holder may question witnesses.
3. At the conclusion of the informal interview the Board may:
   a. Order additional investigation;
   b. Order another informal interview;
   c. Dismiss the complaint;
   d. Impose disciplinary sanctions authorized by A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 if a violation is found; or
   e. Order a formal hearing on the complaint.

B. The Board shall issue written findings of fact, conclusions of law, and order of the Board no later than 60 days from the date of the conclusion of the informal interview.

C. A licensee, certificate holder, or the Board may seek a rehearing or review of a Board decision as stated in A.A.C. R3-11-904 or A.R.S. § 41-1092.02.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-903. Formal Hearing

A. If a formal hearing under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 is to be held before an administrative law judge, the requirements in A.R.S. § 41-1092 through 41-1092.11 apply.

B. If a formal hearing under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 is to be held directly before the Board, the requirements in A.R.S. § 41-1092 through 41-1092.11 and the following apply:

1. The Board shall provide a written complaint and notice of formal hearing to a licensee or certificate holder at the licensee's or certificate holder's last known address of record, by personal service or certified mail, return receipt requested at least 30 days before the date set for the formal hearing;
2. A licensee or certificate holder served with a complaint and notice of hearing shall file an answer by the date specified in the notice of hearing admitting or denying the allegations in the complaint;
3. A complaint and notice of hearing may be amended at any time. The Board shall send written notice of any changes in the complaint and notice of hearing to the licensee or certificate holder at least 20 days before a formal hearing;
4. The licensee or certificate holder may appear at the formal hearing with or without the assistance of an attorney. If the licensee or certificate holder fails to appear, the Board may hold the formal hearing in the licensee's or certificate holder's absence;
5. The Board may conduct a formal hearing without adherence to the rules of procedure or rules of evidence used in civil proceedings. At the formal hearing, the Board shall rule on the procedure to be followed and admissibility of evidence; and
6. The Board shall send a written decision that includes written findings of fact, conclusions of law, and order to the licensee or certificate holder within 60 days after the formal hearing is concluded. The licensee, certificate holder, or Board may seek rehearing or review of the order according to A.A.C. R3-11-904 or A.R.S. § 41-1092.02.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7, 2007

(Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-904. Rehearing or Review of Decisions

A. Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known address or mailed by certified mail to the party or the party's attorney.

B. A party filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.

C. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:

1. Irregularity in the proceedings of the Board or an abuse of discretion, which deprived the party of a fair hearing;
2. Misconduct of the Board or its hearing officer or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly-discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
7. That the findings of fact or decision is not supported by the evidence or is contrary to law.

D. The Board may affirm or modify its decision or grant a rehearing to any party on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.

E. Not later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any of the reasons in subsection (C). An order granting a rehearing shall specify the grounds for the rehearing or review.

F. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, the aggrieved party shall make an application for judicial review of the decision within the time limits permitted for an application for judicial review of the Board's final decision at A.R.S. § 41-1092.02.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later. If a motion for rehearing or review is granted, the Board shall hold the rehearing or review within 90 days from the date the Board issues the order for rehearing or review.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).

R3-11-905. Depositions, Issuance of Subpoenas, Service

A. A party desiring to take the deposition of a witness who is unable to attend a hearing before the Board shall submit a request to take a deposition of an unavailable witness to the Board.

1. If the Board grants the request to take a deposition of an unavailable witness, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure.
2. The Board may, in its discretion, designate the time and place before whom the deposition may be taken.
3. The party requesting the deposition shall bear the expense of the deposition.

B. A subpoena may be issued as follows:

1. If a hearing is to be conducted by the Board, the Board may issue a subpoena for the attendance of a witness or the production of books, records, documents and other evidence according to A.R.S. § 32-2237(F).
   a. The Board shall serve a subpoena on each party at least 10 days before the hearing date.
   b. A party shall submit a written request for a subpoena with the Board. The party shall submit the request in the time necessary to allow compliance with subsection (B)(1)(a).
   c. The party requesting service of a subpoena shall bear the expense of the service of the subpoena.
2. If a hearing is to be conducted by an administrative law judge, a subpoena is issued by the Office of Administrative Hearings according to A.R.S. § 41-1092.02.

C. Service of any decision, order, notice, subpoena, or other process may be made personally in the same manner as provided for service of process in a civil action, or may be mailed by certified mail, postage prepaid, to the last address of record with the Board.

1. Personal service is effective on the date received. Service by certified mail is effective when deposited in the United States mail.
2. Service upon an attorney for a party constitutes service upon the party.
3. Proof of service may be made by the affidavit or oral testimony of the process server.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 10. ANIMAL CREMATORY MINIMUM STANDARDS

R3-11-1001. Definitions

In this Article:

"Animal remains" means the body or part of the body of a dead animal in any stage of decomposition.

"Authorizing agent" means an individual legally entitled to authorize the cremation of animal remains.

"Communal cremation" means remains from multiple animals are in the cremation chamber without any form of separation or identification during the cremation process.

"Cremated remains or ashes" means the residual of animal remains recovered after completion of the cremation process.

"Cremation chamber" means the enclosed space within which the cremation process takes place.

"Individual cremation" means the remains of each animal are separated and placed in a mapped location in the cremation chamber during the cremation procedure.

"Major changes in the scope of animal crematory services," as used in A.R.S. § 32-2292(C), means an increase or decrease in the number of retorts or the addition of services offered or provided by an animal crematory licensed under this Article.

"Operator" means the individual who is responsible for the day-to-day operation of an animal crematory licensed under this Article.

"Owner" means the person named under A.R.S. § 32-2292(B)(2).

"Private cremation" means the remains of only one animal are placed in the cremation chamber.

"Process" means to reduce identifiable bone fragments remaining after cremation to unidentifiable cremated remains.

"Renewal period" means the two years between January 1 of an odd-number year and December 31 of an even-numbered year.

"Responsible Owner" means the person designated by the crematory owner to be responsible to the Board for the operation of the animal crematory.

"Retort" means the machine used to cremate animal remains.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1002. Obtaining an Animal Crematory License

A. A person shall not provide or represent to provide animal cremation services before submitting to the Board an application and the fee required under subsection (B).

B. To obtain an animal crematory license, the Responsible Owner of an animal crematory shall:

1. Submit an application, using a form obtained from the Board, which provides, but is not limited to, the following information:
   a. Name of the animal crematory;
   b. Address of the fixed location of the animal crematory;
   c. Name of the person owning the animal crematory:
      i. If the owner is an individual, that individual's name;
      ii. If the owner is a partnership, the names of all partners; and
      iii. If the owner is corporation or another business form, the names of all individuals owning at least 10 percent of the business;
   d. For each individual identified under subsection (B)(1)(c):
      i. Residential address; and
      ii Documentation of citizenship or alien status, specified under A.R.S. § 41-1080(A), indicating the individual's presence in the U.S. is authorized under federal law.
   e. Names of all operators;
   f. A description of all services that will be provided or offered by the animal crematory;
   g. A description of the animal crematory premises;
   h. A description of any cremation equipment; and
   k. Name and signature of the Responsible Owner;
2. Submit the fee required under R3-11-1004(1);
3. Submit evidence that all operators have received training in the safe and proper operation of the crematory from the manufacturer of the retort or other provider;
4. Submit a copy of every application for or license or permit issued for the animal crematory to operate in this state; and
5. Schedule an inspection of the animal crematory by a Board designee.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1003. Renewing an Animal Crematory License

A. An animal crematory license expires on December 31 of every even-numbered year.

B. A Responsible Owner that fails to submit a renewal application and the fee required under R3-11-1004(2) to the Board on or before December 31 of an even-numbered year shall cease providing animal cremation services until a renewal application is submitted.

C. To renew an animal crematory license, the Responsible Owner shall submit to the Board, between October 1 and December 31 of an even-numbered year:

1. A renewal application that provides the following information:
   a. Name of the animal crematory;
   b. Address of the fixed location of the animal crematory;
   c. Name of the owner of the animal crematory:
      i. If the owner is an individual, that individual's name;
      ii. If the owner is a partnership, the names of all partners; and
      iii. If the owner is corporation or another business form, the names of all individuals owning at least 10 percent of the business;
   d. For individuals named under subsection (C)(1)(c), if the documentation previously submitted under R3-11-1002(B)(1)(d)(ii) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired;
   e. Names of all operators; and
   f. Signature of the Responsible Owner; and
2. The fee required under R3-11-1004(2)

D. If a renewal application is not submitted as required under subsection (C) but is submitted before February 1 following expiration on the previous December 31, the Responsible Owner shall include with the renewal application an affirmation that animal cremation services were not provided at the animal crematory after the animal crematory license expired on the previous December 31.

E. If a renewal application is not submitted under either subsection (C) or (D), the Responsible Owner may have the animal crematory re-licensed within one year following expiration only by:

1. Submitting the renewal application and fee required under subsection (C);
2. Submitting the affirmation required under subsection (D); and
3. Submitting the penalty required under R3-11-1004(3).

F. If a renewal application is not submitted under subsection (C), (D), or (E), the Responsible Owner may have the animal crematory re-licensed only by complying with R3-11-1002.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1004. Fees
Under the authority provided by A.R.S. § 32-2207(9), the Board establishes and shall collect the following fees:
1. Animal crematory license: $400;
2. Renewal of an animal crematory license: $400;
3. Penalty for license renewal after January 31 following expiration: $100; and
4. Duplicate license: $10.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1).

R3-11-1005. Minimum Standards for an Animal Crematory
The owner shall ensure that:
1. The animal crematory complies with all federal, state, and local laws;
2. The animal crematory is at a fixed location;
3. The retort is constructed to withstand temperatures high enough to reduce animal remains to bone fragments yet protect persons and property from damage from excessive heat or harmful emissions;
4. The retort is shielded from public view;
5. The retort is competently installed. If the retort is installed in Arizona after the effective date of this Article, the retort shall be installed according to the manufacturer's recommendations and in accordance with all state, federal, and local laws and ordinances;
6. If the retort is inside a building:
   a. It is vented to the outside of the building; and
   b. There is adequate exhaust to prevent heat buildup;
7. The cremation chamber receives fresh air to aid in combustion;
8. The animal crematory has a storage facility that:
   a. Chills animal remains to at least 40 °F;
   b. Is secure from access by unauthorized individuals; and
   c. Preserves the dignity of the animal remains;
9. The animal crematory has the equipment and supplies necessary to conduct cremations in a manner that protects the health and safety of crematory employees and the public; and
10. All city, county, and other building codes, restrictions, and guidelines applicable to the animal crematory are followed.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1006. Minimum Operating Standards for an Animal Crematory
The owner shall ensure that:
1. The animal crematory accepts delivery of animal remains only from:
   a. The owner of the animal remains;
   b. An animal shelter or humane society;
   c. A veterinarian licensed under this Chapter;
   d. An individual or entity with whom the animal crematory has a written contract regarding collection, pick-up, or delivery services;
   e. An authorized agent of a person described under subsections (1)(a) through (1)(d); or
   f. A state, county, city, or other corporation authorized to remove dead animals.
2. Animal remains that cannot be cremated immediately upon receipt are placed in the storage facility described in R3-11-1005(8) but for no more than 30 days;
3. If animal remains are submitted for individual cremation:
   a. The animal remains are cremated separate from other animal remains;
   b. The cremated remains are not commingled with other cremated remains;
   c. The cremated remains are removed from the cremation chamber to the extent feasible and placed in an appropriately sized and securely closed container;
   d. A label containing the following information is permanently affixed to the container in which the cremated remains are placed:
      i. Name of the crematory,
      ii. Name of the animal cremated, and
      iii. Date of cremation; and
   e. The cremated remains are disposed according to instructions from the authorizing person or agent;
4. All animal remains submitted for cremation are cremated;
5. Animal remains that are communally cremated are disposed of in a legal manner;
6. The cremation chamber is:
   a. Operated in a safe and sanitary manner and maintained so the cremation chamber functions in an effective and efficient manner; or
   b. Operated and maintained according to the manufacturer's recommendations if the retort is installed in Arizona after the effective date of this Article;
7. Employees of the animal crematory who handle animal remains use universal precautions and exercise reasonable care to minimize the risk of injury or transmitting communicable disease; and
8. Instructions for operation of the cremation chamber, including emergency shut-down procedures, are located at the animal crematory and easily accessible.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1007. Written Procedures Required
A. The Responsible Owner shall ensure that the animal crematory has written procedures regarding the manner in which:
1. Animal remains are identified from the time the animal crematory accepts delivery of the animal remains until the cremated remains are released according to instructions from the authorizing person or agent;
2. Authorization to cremate is obtained and documented;
3. The cremation chamber is loaded and unloaded;
4. Cremated remains are processed;
5. Cremated remains, including unclaimed cremated remains, are returned to the authorized agency or disposed of; and
6. Records are to be completed and maintained for three years from the date of service.

B. The Responsible Owner shall ensure that all employees involved in providing animal cremation services are familiar with and follow the required procedures.

C. The Responsible Owner shall make these written procedures available for inspection by the Board upon request.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1008. Recordkeeping Requirements

A. The Responsible Owner shall ensure that records containing the following information are maintained for three years:
1. For the cremation of individual animal remains:
   a. Last name of the owner of the animal;
   b. Name of the animal;
   c. Description of the animal, including its weight;
   d. Name of the individual, facility, or organization from which the animal was received;
   e. Authorization to cremate;
   f. Date of cremation and in which retort the cremation occurred; and
   g. Date and manner of disposition of cremated remains;
2. For a communal cremation of animal remains:
   a. Name of the individual, facility, or organization from which the animal remains were received;
   b. Number of animals and estimated total weight;
   c. Last name of animals' owners, if known;
   d. Names of animals, if known;
   e. Authorization to cremate;
   f. Date of cremation and in which retort the cremation occurred; and
   g. Date and manner of disposition of cremated remains.

B. If an animal crematory uses a service to collect, pick up, or deliver animal remains for cremation, the Responsible Owner shall enter into a written contract with the service that requires the service to inform the authorizing person or agent, in writing, of the name of the animal crematory that will do the cremation. The Responsible Owner shall maintain a copy of any contract for two years after expiration of the contract term.

C. The Responsible Owner shall maintain for three years records of all maintenance performed on the retort.

D. The Responsible Owner shall make the records required under this Section available for inspection by the Board upon request.

E. Under A.R.S. § 32-2294(A)(3), the Responsible Owner shall make records required under subsection (A) available on request to the authorizing person or agent.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1009. Change in a Responsible Owner

Under A.R.S. § 32-2292(D), a change of Responsible Owner, cancels a license and the Responsible Owner shall:
1. Submit the cancelled license to the Board within 20 days after the change in Responsible Owner; and
2. Ensure that animal cremation services are not provided until an application and fee are submitted under R3-11-1002.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1010. Change in Operator

Within 30 days after a change in operator, the Responsible Owner shall provide a written notice to the Board that includes:
1. Name of the licensed animal crematory;
2. Animal crematory license number;
3. Name of the former operator;
4. Name of the new operator;
5. Date on which the new operator assumed responsibility for the animal crematory; and
6. An affirmation, signed by the Responsible Owner, that the new operator received training in the safe and proper operation of the cremation chamber and the written procedures required under R3-11-1007.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

32-2202. Board; appointment; term; qualifications; officers; compensation

A. There shall be an Arizona state veterinary medical examining board consisting of nine members appointed by the governor pursuant to section 38-211.

B. Each member shall serve for a term of four years. A member shall not serve more than two full terms. After notice and a hearing before the governor, a member of the board may be removed on a finding by the governor of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. The term of any member automatically ends on written resignation submitted to the board or to the governor.

C. Five members shall be licensed veterinarians who have an established practice location in this state or are employed by a university or a political subdivision of the state and who have resided and practiced in the state for at least five years immediately preceding appointment, no more than three of whom shall be from the same veterinary college. Three members shall not be veterinarians, two representing the general public and one representing the livestock industry. One member shall be a certified veterinary technician who has held the designation for at least five years, is currently employed in the veterinary field in this state and has practiced and resided in this state for at least five years immediately preceding appointment. Except as provided in subsection F of this section, a person who has been convicted of a violation of any provision of this chapter is ineligible for appointment.

D. The board shall elect a chairman and such other officers as it deems necessary. The term of each officer shall be one year ending June 30, or until the officer's successor is elected and qualifies.

E. Each member of the board shall receive compensation at a rate not exceeding one hundred dollars for each day engaged in the service of the board.

F. The governor may appoint a person to the board who has previously been sanctioned pursuant to section 32-2233, subsection B.

32-2204. Meetings; quorum

A. The board shall hold one annual meeting and other meetings as necessary. Special meetings may be called by the chairman of the board. The time and place of the annual meeting and the method of giving notice of special meetings shall be fixed by the rules adopted by the board.

B. At each board meeting the board shall make a call to the public informing attendees that any member of the public may address the board regarding any matter that appears on the board's agenda.

C. The board shall tape record all discussions of complaints that are not conducted in executive session. The board shall retain the tapes for at least two years.

D. A majority of the board members shall constitute a quorum.

32-2207. Veterinary board; powers and duties

The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of veterinary medicine through licensure and regulation of the profession in this state. The powers and duties of the board include:

1. Administering and enforcing this chapter and board rules.

2. Regulating disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and certificates and the rehabilitation of licensees and certificate holders pursuant to this chapter and board rules.

3. Prescribing the forms, content and manner of application for licensure and certification and renewal of licensure and certification and setting deadlines for the receipt of materials required by the board.

4. Keeping a record of all licensees and certificate holders, board actions taken concerning all applicants, licensees and certificate holders and the receipt and disbursal of monies.

5. Adopting an official seal for attestation of licenses, certificates and other official papers and documents.

6. Investigating charges of violations of this chapter and board rules and orders.

7. Subject to title 41, chapter 4, article 4, employing an executive director who serves at the pleasure of the board.

8. Adopting rules pursuant to title 41, chapter 6 that relate to the qualifications and regulation of doctors of veterinary medicine, certified veterinary technicians, veterinary premises, mobile veterinary clinics and crematories and other rules that the board deems necessary for the administration of this chapter. The rules may include continuing education requirements for licensees and certificate holders and shall include:

(a) Minimum standards of veterinary practice.

(b) Provisions to ensure that the public has reasonable access to nonconfidential information about the licensing or certification status of persons regulated under this chapter and about resolved complaints against licensees and certificate holders.

(c) Provisions to ensure that members of the public have an opportunity to evaluate the services that the board provides to the public.

(d) A provision that licensed veterinary faculty members are not subject to continuing education requirements.

9. Establishing by rule fees and penalties as provided in this chapter, including fees for the following:

(a) Reproduction of documents.

(b) Verification of information about a licensed veterinarian at the request of a veterinary licensing board in another jurisdiction.

(c) Return of checks due to insufficient funds, an order to stop payment or a closed account.

(d) Provision of a list of the names of veterinarians, certified veterinary technicians or veterinary premises licensed or certified by the board.

10. Adopting rules that require the board to inform members of the public about the existence of the office of the ombudsdman-citizens aide established by section 41-1375.

32-2213. Application for license; retention of examination materials

A. A person desiring to practice veterinary medicine or surgery, including as a faculty member at a veterinary college, shall apply in writing to the board for a license to practice. The application shall be on a form provided by the board and shall require the following information:

1. The name, age and address of the applicant.

2. The names of schools of veterinary medicine that the applicant attended, the dates of attendance and the date of transfer.

3. The degrees held from schools of veterinary medicine.

4. The location and length of time in active practice in other states or territories of the United States, if any, and whether or not the applicant is in good standing in each location of practice.

5. An affidavit that the facts recited in the application are accurate, true, and complete.

6. An affidavit that no complaint has been filed and is pending, no investigation is pending and no disciplinary action has been taken or is pending on any veterinary license the applicant holds from another state.

7. For a veterinary faculty member license application, documentation from an authorized official of a veterinary college in this state that shows that the applicant has been appointed to the faculty of that veterinary college.

8. Any other information that is required by rules adopted by the board.

B. All examination papers, tapes, questions and answers shall be maintained in accordance with a retention schedule approved by the Arizona state library, archives and public records.

32-2214. Examination of applicants; confidentiality

A. All applicants for a veterinary license, not including a veterinary faculty member license, shall take an examination that consists of the following:

1. A state examination approved by the board.

2. The North American veterinary licensing examination.

B. The state examination shall be both:

1. Held in January and June of each year unless otherwise provided by the board.

2. Conducted so that the members of the board do not know the name of the applicant until the judging or grading is officially completed.

C. A grade of at least seventy-five percent is required to successfully pass the North American veterinary licensing examination. A grade of at least seventy-five percent is required to successfully pass the state examination. The scores of the North American veterinary licensing examination and the state examination shall not be averaged. National board scores that are received from either the national examination committee or the North American veterinary licensing examination committee from another state may be accepted for part of an applicant's passing score.

D. An applicant's score that was received within the preceding five years and that is on record at the national examination service or the North American veterinary licensing examination committee shall be verified through either the national examination service or the North American veterinary licensing examination committee, unless the applicant is applying for a license by endorsement or a specialty license under section 32-2215, subsection C or D, in which case the applicant's score shall be transcribed and received by the board.

E. All examination materials, records of examination grading and performance and transcripts of educational institutions concerning applicants or licensees are confidential and not public records.

32-2215. Qualifications for license to practice veterinary medicine

A. An applicant for a license issued under this chapter shall:

1. Be a graduate of a veterinary college that is accredited by the American veterinary medical association or hold a certificate issued by the educational commission for foreign veterinary graduates, the program for the assessment of veterinary education equivalence or a foreign graduate testing program approved by the board. This paragraph does not apply to an applicant for a veterinary faculty member license who has graduated from a veterinary college.

2. Satisfactorily pass both a state examination approved by the board as provided in this chapter and the North American veterinary licensing examination. This paragraph does not apply to an applicant for a veterinary faculty member license.

B. An applicant may be denied licensure either before or after an examination if the applicant has committed any act that if committed by a licensee would be grounds for suspension or revocation of a license to practice veterinary medicine under this chapter.

C. The board may waive the examination requirement pursuant to section 32-2214, subsection A, paragraph 2 and, except as provided in subsection E of this section, may issue a license by endorsement to an applicant to practice veterinary medicine if the applicant provides all required documentation pursuant to section 32-2213 and meets the following requirements:

1. Holds an active license in one or more other states or in Canada and submits verification that the applicant has previously taken and passed the examination required by section 32-2214, with a score at least equal to the score required to pass in this state. An applicant who received original licensure before the examination required by section 32-2214 was required in the state in which the applicant was originally licensed may be eligible for licensure without having taken that examination as required pursuant to this chapter if all other requirements are met.

2. Lawfully and actively engages in the practice of veterinary medicine for at least three of the preceding five years or six of the preceding ten years in one or more states in this country or in Canada before filing an application for licensure in this state.

3. Has graduated from a veterinary college recognized by the board.

4. Successfully passes a state examination approved by the board with a grade of at least seventy-five percent.

5. Pays a fee for the license of $750.

D. The board may waive the examination requirement pursuant to section 32-2214, subsection A, paragraph 2 and, except as provided in subsection E of this section, may issue a specialty license to an applicant to practice veterinary medicine if the applicant provides all required documentation pursuant to section 32-2213 and meets the following requirements:

1. Holds a current certification as a specialist of a national specialty board or college recognized by the American veterinary medical association.

2. Limits the applicant's practice to the scope of the applicant's board certification.

3. Successfully passes a state examination approved by the board with a score of at least seventy-five percent.

4. Pays a fee for the specialty license of $750.

E. The board shall determine whether previous disciplinary action prevents licensure by endorsement or specialty licensure of an applicant to practice veterinary medicine, and the board may discipline the licensee at the time of licensure as a result of the previous disciplinary action.

F. Any veterinary faculty member who is employed by a veterinary college that is accredited by the American veterinary medical association, if applicable, is subject to the requirements under the veterinary faculty member license.

32-2216. Issuance of temporary permits; emergency temporary permits; definition

A. The board may issue temporary permits to veterinary license applicants and to veterinarians who are licensed in other states and who enter this state to provide voluntary services during a state of emergency as declared by the governor or the board of supervisors of the county in which the board of supervisors has declared a local emergency pursuant to section 26-311. Except for applicants who are veterinary faculty members who have graduated from a veterinary college, applicants for all temporary permits must be graduates of an American veterinary medical association accredited veterinary college or holders of a certificate from the educational commission for foreign veterinary graduates or from a program for the assessment of veterinary education at the time of application.

B. The temporary permit issued under this section entitles a veterinary license applicant to engage in the active practice of veterinary medicine in this state as an employee of a licensed veterinarian, this state or any county or municipality in this state. The applicant is eligible for the next examination, if the applicant has not violated any provision of this chapter. An applicant working under the direct and personal instruction, control or supervision of a licensed veterinarian and whose compensation is paid by the veterinarian may perform those acts of animal health care assigned by the veterinarian having responsibility for the care of the animal. The temporary permit described in this subsection expires twenty days after the examination. If the applicant fails for good and sufficient reason to take the examination, the board, by majority consent, may extend the permit until the next succeeding examination. Except as otherwise provided in this section, the holder of a temporary permit must be examined and satisfactorily pass the license examination next following the issuance of the permit and duly receive a license in order to continue active professional practice. The temporary permit may be extended only one time. For the purposes of this subsection, "direct and personal instruction, control or supervision" means that a veterinarian who is licensed by the board is physically present and personally supervising a temporary permittee when the permittee is practicing acts of veterinary medicine except if the permittee is at a temporary site for the purpose of delivering services to large animals or if the permittee is administering emergency services not during regular office hours. In these cases, phone contact constitutes direct and personal instruction, control or supervision.

C. If an employer, for any reason, terminates the employment of the applicant, the employing veterinarian shall notify the board and the temporary permit described in subsection B of this section is immediately void.

D. An emergency temporary permit that is issued to an individual who is a veterinarian licensed in good standing in another state entitles the individual to provide voluntary veterinary care during a state of emergency or local emergency for the sole purpose of assisting in care related to that emergency. The emergency temporary permit expires ninety days after the date of issuance or at the end of the state of emergency or local emergency, whichever occurs first. An applicant for an emergency temporary permit shall submit a complete application, including information regarding veterinary licensure in any other state and verification that the statutes and rules pertaining to the board have been reviewed. The board shall verify whether the veterinarian is licensed in the state or states indicated and confirm the applicant's good standing. The applicant is not required to pass the state veterinary examination. A veterinarian who is issued an emergency temporary permit under this section shall practice in accordance with all laws and rules related to the practice of veterinary medicine in this state. The board may investigate any alleged violation by a holder of an emergency temporary permit and take disciplinary action as prescribed in this chapter. A veterinarian granted an emergency temporary permit under this section is a licensed, certified or authorized emergency responder pursuant to section 49-133 and an emergency worker as defined in section 26-301.

E. For the purposes of this section, "emergency temporary permit" means a temporary permit that is issued to a veterinarian who is licensed in another state and who enters this state to provide voluntary services during a state of emergency as declared by the governor or a local emergency declared by a county board of supervisors pursuant to section 26-311.

32-2217. Employees of the state or political subdivisions; licensure

The board shall issue a license to any person who is not licensed by examination to practice veterinary medicine in this state and who is employed as a veterinarian by this state or any political subdivision. An applicant for a license under the terms of this section shall apply in writing to the board as required by section 32-2213 and shall meet the qualifications prescribed by section 32-2215 with the exception of section 32-2215, subsection A, paragraph 2. The holder of a license issued under the terms of this section shall engage only in such actions of the practice of veterinary medicine as authorized by the board, and acts of practice may not be performed for any person or firm other than this state or the political subdivision employing the licensee. The licensee is subject to the rules of the board and this chapter relating to unprofessional or dishonorable conduct. A license expires on December 31 of every even-numbered year unless suspended or revoked. A license is renewable for two years on payment of the renewal fee. The fee for issuance of the license shall be $5 in even-numbered years and $10 in odd-numbered years, and the biennial renewal fee shall be $10. The license shall be revoked on termination of employment of the licensee.

32-2218. License renewal and reinstatement

A. Except as provided in subsection D of this section or section 32-4301, a license issued under this chapter remains in effect until December 31 of every even-numbered year unless it is suspended or revoked. Except as provided in section 32-4301, on submittal of an application for renewal and payment of a renewal fee, a license is renewed for two years.

B. Failure to pay the license fee before February 1 following expiration of the license shall be a forfeiture of the license, and the license shall not be restored except upon written application to the board and payment of a penalty fee of fifty dollars in addition to all regular license fees and past due fees owed to the board. A person applying for reinstatement of a license within thirty-six months of expiration shall not be required to submit to an examination because of failure to pay the license fee, but it is unlawful for a person to practice veterinary medicine or any branch of veterinary medicine during the period in which the person's license has been forfeited by reason of nonpayment of the license fee. If an applicant for reinstatement of a license has not completed the continuing education requirements, a license may be reinstated if the continuing education requirements are completed within six months of reinstatement. A person who does not apply for reinstatement within thirty-six months after expiration of the license must meet the requirements set forth in sections 32-2213, 32-2214 and 32-2215.

C. An application for renewal shall include a signed statement that no complaint has been filed and is pending, no investigation is pending and no disciplinary action has been taken or is pending on any veterinary license the veterinarian holds from another state.

D. A veterinary faculty member license issued under this chapter remains in effect until December 31 of every even-numbered year unless it is suspended or revoked or unless the licensee is no longer employed by the veterinary college. If the licensee is no longer employed by the veterinary college, the license expires on the date of the separation of employment.

32-2219. Fees; veterinary licenses; veterinary faculty member licenses

A. Every original application for a veterinary license or a veterinary faculty member license shall be accompanied by an examination fee of not more than four hundred dollars.

B. For every issuance of a veterinary license or a veterinary faculty member license there shall be collected a fee of not more than one hundred dollars in even-numbered years and two hundred dollars in odd-numbered years.

C. For every renewal of a veterinary license or a veterinary faculty member license there shall be collected a fee of not more than four hundred dollars.

D. Every request for a temporary permit shall be accompanied by a fee of seventy-five dollars.

E. For every issuance of a duplicate license, there shall be collected a fee of not more than twenty-five dollars.

F. No fee shall be returned to an applicant.

32-2232. Unprofessional or dishonorable conduct

As used in this chapter, unprofessional or dishonorable conduct includes:

1. The fraudulent use of any certificate or other official form used in practice that would increase the hazard of dissemination of disease, the transportation of diseased animals or the sale of inedible food products of animal origin for human consumption.

2. Inadequate methods in violation of meat inspection procedures prescribed by the federal government and Arizona meat inspection laws or wilful neglect or misrepresentation in the inspection of meat.

3. Misrepresentation of services rendered.

4. Failure to report, or the negligent handling of, the serious epidemic diseases of animals, such as anthrax, rabies, glanders, brucellosis, tuberculosis, foot and mouth disease, hog cholera, and other communicable diseases known to medical science as being a menace to human or animal health.

5. The dispensing or giving to anyone of live culture or attenuated live virus vaccines to be administered by a layman without providing instruction as to their administration and use.

6. Having professional connection with, or lending one's name to, any illegal practitioner of veterinary medicine and the various branches thereof.

7. Chronic inebriety or unlawful use of narcotics, dangerous drugs or controlled substances.

8. Fraud or dishonesty in applying or reporting on any test or vaccination for disease in animals.

9. False, deceptive or misleading advertising, having for its purpose or intent deception or fraud.

10. Conviction of a crime involving moral turpitude, or conviction of a felony.

11. Malpractice, gross incompetence or gross negligence in the practice of veterinary medicine.

12. Violation of the ethics of the profession as defined by rules adopted by the board.

13. Fraud or misrepresentation in procuring a license.

14. Knowingly signing a false affidavit.

15. Distribution of narcotics, dangerous drugs, prescription-only drugs or controlled substances for other than legitimate purposes.

16. Violation of or failure to comply with any state or federal laws or regulations relating to the storing, labeling, prescribing or dispensing of controlled substances or prescription-only drugs as defined in section 32-1901.

17. Offering, delivering, receiving or accepting any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring animals or services to any person.

18. Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of this chapter, a rule adopted by the board or a written order of the board.

19. Failing to dispense drugs and devices in compliance with article 7 of this chapter.

20. Performing veterinary services without adequate equipment and sanitation considering the type of veterinary services provided.

21. Failure to maintain adequate records of veterinary services provided.

22. Medical incompetence in the practice of veterinary medicine.

23. Cruelty to or neglect of animals. For the purposes of this paragraph, "cruelty to or neglect of animals" means knowingly or negligently torturing, beating or mutilating an animal, killing an animal in an inhumane manner or depriving an animal of necessary food, water or shelter.

24. Representing that the veterinarian is a specialist if the veterinarian lacks the credentials to be a specialist.

25. Performing veterinary services without having a valid veterinarian client patient relationship.

26. Releasing, prescribing or dispensing any prescription drugs in the absence of a valid veterinarian client patient relationship.

32-2233. Revocation or suspension of license or permit; civil penalty; report of perjury

A. The board, by majority consent, may revoke or suspend a permit or license granted to any person under this chapter or may impose a civil penalty of not to exceed one thousand dollars against any veterinarian or the responsible veterinarian, or both, for:

1. Unprofessional or dishonorable conduct.

2. Publicly professing to cure or treat diseases of a highly contagious, infectious and incurable nature.

3. Curing or treating an injury or deformity in such a way as to deceive the public.

4. Testing any animal for any communicable disease and knowingly stating verbally or in writing that the animals are diseased or in a disease-free condition if the statement is contrary to the indication of the test made.

B. The board may sanction any of the following conduct as an administrative violation, rather than unprofessional conduct, and may impose a civil penalty of not more than one thousand dollars for any of the following:

1. Failure to timely renew the veterinary license or the premises license while continuing to practice veterinary medicine or conducting business from that premises.

2. Failure to notify the board in writing within twenty days of any change in residence, practice, ownership, management or responsible veterinarian.

3. Minor records violations that are routine entries into a medical record and that do not affect the diagnosis or care of the animal.

C. The civil penalties collected pursuant to this chapter shall be deposited in the state general fund.

D. The board may report to the proper legal authorities for perjury anyone it suspects of giving deliberate, fraudulent testimony whether the testimony is given personally, telephonically or in writing.

32-2234. Informal and formal hearings; censure or probation; notice; consent agreements; rehearing; judicial review

A. If the board receives information indicating that a veterinarian may have engaged in unprofessional or dishonorable conduct, and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may request an informal interview with the veterinarian. If the veterinarian refuses the interview, and other evidence indicates suspension or revocation of the veterinarian's license may be in order, or if the veterinarian accepts and the results of the interview indicate suspension or revocation of the veterinarian's license may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the veterinarian refuses the interview, and other evidence relating to the veterinarian's professional competence indicates that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, or if the veterinarian accepts the informal interview and the informal interview and other evidence relating to the veterinarian's professional competence indicate that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, the board may take any or all of the following actions:

1. Issue a decree of censure.

2. Fix a period and terms of probation as are best adapted to protect the public and rehabilitate or educate the veterinarian. The terms of probation may include temporary suspension, for not to exceed thirty days, or restriction of the veterinarian's license to practice. The failure to comply with any term of the probation is cause to consider the entire case plus any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not to exceed one thousand dollars per violation.

B. Notwithstanding subsection A of this section, the board may require a veterinarian or certified veterinary technician under investigation to be interviewed by the board or its representatives. The board may require a licensee or certificate holder who is under investigation pursuant to subsection A of this section to undergo at the licensee's or certificate holder's expense any combination of medical, physical or mental examinations that the board finds necessary to determine the veterinarian's or the certified veterinary technician's condition.

C. On receipt of an allegation of drug or alcohol abuse, the board or the executive director acting with the approval of both a veterinarian member and a public member of the board may require a licensee or certificate holder who is under investigation pursuant to subsection A of this section to undergo, at the licensee's or certificate holder's expense, testing or examination to detect the presence of alcohol or other drugs.

D. If, as a result of information ascertained during an investigation, informal interview or formal hearing of a veterinarian, the board has concern for the veterinarian's conduct but has not found the veterinarian's conduct in violation of section 32-2232, the board in its discretion may issue a letter of concern to the veterinarian regarding the veterinarian's conduct or issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. Notwithstanding subsection A of this section, the board may enter into a consent agreement with a veterinarian either before or after conducting an informal interview. Pursuant to a consent agreement, the board may take any of the disciplinary actions listed in subsection A, paragraphs 1, 2 and 3 of this section or may act to otherwise limit or restrict the veterinarian's practice or to rehabilitate the veterinarian.

F. If the board finds, based on information it receives pursuant to this section, that public or animal health, safety or welfare requires emergency action, and incorporates a finding that emergency action is necessary in its order, the board may order summary suspension of a license pending proceedings for revocation or other action. If the board orders a summary suspension, the board shall serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days pursuant to title 41, chapter 6, article 10.

G. Before a permit or license may be revoked or suspended for any cause provided by section 32-2233, other than by terms of probation, the board must serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.

H. After service of notice of the decision of the board suspending or revoking a license, censuring a licensee, placing a licensee on probation or dismissing the complaint, the licensee may apply for a rehearing or review by filing a motion pursuant to title 41, chapter 6, article 10. The filing of a motion for rehearing shall be a condition precedent to the right of appeal provided by this section. The filing of a motion for rehearing shall suspend the operation of the board's action in suspending or revoking a license or censuring or placing a licensee on probation and shall allow the licensee to continue to practice as a veterinarian pending denial or granting of the motion and pending the decision of the board on rehearing if the motion is granted. The board may also grant a rehearing on its own motion, if it finds newly discovered evidence or any other reason justifying a reconsideration of the matter.

I. Except as provided in section 41-1092.08, subsection H, any party aggrieved by a final order or decision of the board may appeal to the superior court pursuant to title 12, chapter 7, article 6.

J. If the state veterinary medical examining board acts to modify any veterinarian's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

K. All notices that the board is required to provide to any person under this chapter are fully effective by personal service or by mailing a true copy of the notice by certified, return receipt mail addressed to the person's last known address of record in the board's files. Notice by mail is complete at the time of its deposit in the mail. Service on any person represented in a matter by an attorney is complete when the notice is sent to the attorney at the last known address of record in the board's files.

L. The board shall retain all complaint files for at least ten years and shall retain all complaint files in which disciplinary action was taken for at least twenty-five years.

32-2237. Committee to investigate violations; referral to county attorney or attorney general; inspection of records; subpoenas; civil penalty; injunctions; cease and desist orders; confidentiality

A. The board shall appoint one or more investigative committees, each consisting of three licensed veterinarians who are not board members and two members of the general public who are not board members. The board shall appoint and dismiss members of investigative committees. Each member shall serve for a term of two years. A committee member may not serve more than four consecutive terms. A member of the investigative committee must resign when the member files an application to serve on the board. A quorum for an investigative committee shall include at least three members, at least two of whom must be veterinarians.

B. The investigative committee may interview witnesses, gather evidence and otherwise investigate any allegations accusing any person of violating any of the provisions of this chapter. An assistant attorney general shall advise the investigative committee on all questions of law arising out of its investigations. The expenses of the committee shall be paid out of the veterinary medical examining board fund.

C. The investigative committee shall prepare a written report relating to any allegations it investigates. The committee shall present its report to the board in an open meeting. The report shall include:

1. A summary of the investigation.

2. Findings of fact.

3. Either a recommendation to dismiss the allegation made in the complaint or a finding that a violation of this chapter or a rule adopted pursuant to this chapter occurred.

D. If the board rejects any recommendation contained in a report of the investigative committee, it shall document the reasons for its decision in writing.

E. Upon the complaint of any citizen of this state, or upon its own initiative, the board may investigate any alleged violation of this chapter. If after investigation the board has probable cause to believe that an unlicensed person is performing acts that are required to be performed by a person licensed pursuant to this chapter, the board may take one or more of the following enforcement actions:

1. Issue a cease and desist order.

2. Request the county attorney or attorney general to file criminal charges against the person.

3. File an action in the superior court to enjoin the person from engaging in the unlicensed practice of veterinary medicine.

4. After notice and an opportunity for a hearing, impose a civil penalty of not more than one thousand dollars for each violation.

F. The board or its agents or employees may at all reasonable times have access to and the right to copy any documents, reports, records or other physical evidence of any veterinarian, including documents, reports, records or physical evidence maintained by and in the possession of any veterinary medical hospital, clinic, office or other veterinary medical premises being investigated, if such documents, records, reports or other physical evidence relates to a specific investigation or proceeding conducted by the board.

G. The board on its own initiative or upon application of any person involved in an investigation or proceeding conducted by the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents, reports, records or any other physical evidence if such evidence relates to the specific investigation or proceeding conducted by the board.

H. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they relate to resolved complaints:

1. The complaint.

2. The response and any rebuttal statements submitted by the licensee or certificate holder.

3. Board discussions of complaints that are recorded pursuant to section 32-2204, subsection C.

4. Written reports of an investigative committee that are prepared pursuant to subsection C of this section.

5. Written statements of the board that are prepared pursuant to subsection D of this section.

32-2241. Certified veterinary technician; services performed

A certified veterinary technician may perform those services authorized by the board pursuant to section 32-2245 in the employ of and under the direction, supervision and control of a licensed veterinarian who shall be responsible for the performance of the certified veterinary technician. Compensation for such authorized services shall be derived solely from the employing veterinarian.

32-2242. Application for certification as veterinary technician; qualifications

A. A person desiring to be certified as a veterinary technician shall apply in writing to the board on a form furnished by the board.

B. The applicant shall be at least eighteen years of age and shall furnish satisfactory evidence of graduation from a two-year curriculum in veterinary technology, or the equivalent of such graduation as determined by the board, in a college or other institution approved by the board.

C. The application shall be accompanied by the application and examination fee established by the board.

D. An applicant from another state is not required to retake the veterinary technician national examination if the applicant can provide all of the following:

1. Proof that the applicant's original score meets the minimum score required by the board.

2. Proof that the applicant holds an active license in good standing in another state or in Canada.

3. Proof of employment as a veterinary technician in two of the preceding four years or four of the preceding seven years.

32-2243. Examination

The board shall adopt rules and regulations governing the written examinations and practical demonstrations by which all applicants shall be tested and shall provide for giving reasonable notice of the time and place for examinations.

32-2245. Certified veterinary technician; services; rules and regulations

A. The board shall adopt rules and regulations pertaining to and limiting the services performed by a certified veterinary technician.

B. Services performed by a certified veterinary technician shall not include surgery, diagnosis or prognosis of animal diseases or prescribing of drugs and medicine.

32-2246. Duration of certificate

A certificate issued pursuant to this article shall expire on December 31 of every even-numbered year unless suspended or revoked. On payment of the renewal fee, a certificate is renewed for a period of two years.

32-2247. Renewal of expired certificates

Except as otherwise provided in this article, an expired certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last preceding regular renewal date. Except as provided in section 32-4301, if the certificate is renewed more than thirty days after its expiration, the applicant as a condition precedent to renewal shall also pay the delinquency fee established by the board. Renewal under this section shall be effective on the date on which the application is filed, on the date the renewal fee is paid or on the date on which the delinquency fee, if any, is paid, whichever occurs last.

32-2248. Renewal of certification; certificates expired three years or more

Except as provided in section 32-4301, a person who fails to renew a certificate within three years after its expiration may not renew it, and it shall not be restored, reissued or reinstated thereafter, but the person may apply for and obtain a new certificate if:

1. No fact, circumstance or condition exists that, if the certificate were issued, would justify its revocation or suspension.

2. The applicant takes and passes the examination, if any, which would be required on application for certification for the first time.

3. All fees are paid that would be required on application for certification for the first time.

32-2250. Veterinary technician certificate fees

The board shall establish the fees provided for in this article in amounts not to exceed the following:

1. Application and examination fee, one hundred fifty dollars.

2. Issuance of a certificate fee, twenty-five dollars in even-numbered years and fifty dollars in odd-numbered years.

3. Renewal fee, one hundred dollars.

4. Delinquency fee, twenty-five dollars.

5. Duplicate certificate fee, twenty dollars.

32-2271. License required; premises; inspections; exemption

A. A person shall not provide veterinary services, including diagnosis, treatment, dentistry, surgery or dispensing prescription-only veterinary drugs, to the public without a license issued by the board.

B. A premises license shall be for a fixed location where a veterinarian retains the records of a veterinary practice, stores veterinary equipment or offers veterinary services to the public. A responsible veterinarian who holds a premises license may provide veterinary services to the public at the licensed fixed location and any temporary site in this state at which adequate equipment and sanitation are available considering the type of veterinary medical services provided. A veterinarian shall obtain a separate premises license for each fixed location at which veterinary services are regularly offered to the public. The responsible veterinarian may authorize other licensed veterinarians to provide services to the public pursuant to the responsible veterinarian's veterinary premises license. Both the responsible veterinarian and the veterinarian who provides the veterinary services shall maintain records of the veterinary services provided and ensure that adequate equipment and sanitation are available.

C. The board shall inspect all fixed locations before issuing a premises license. Adequate equipment and sanitation shall be available for use at any location which is necessary to provide the range of veterinary services which the veterinarian proposes to offer.

D. The board may inspect any site at which a veterinarian offers veterinary services to the public.

E. This section does not apply to county-sponsored rabies vaccination clinics, persons who are exempt under section 32-2211 and veterinarians licensed under section 32-2217.

32-2272. Veterinary premises license; application; nontransferability; expiration; renewal; civil penalty

A. Any person who desires to establish premises at or from which veterinary services are offered to the public shall file with the board an application for a veterinary premises license accompanied by the license fee.

B. The application shall be on a form prescribed and furnished by the board and shall contain:

1. The name and location of the premises.

2. The name of the person owning the premises and the name and signature of the veterinarian responsible to the board for the operation of the premises. The responsible veterinarian shall be a veterinarian who is licensed in this state and who resides in this state or who holds a special permit under section 32-2217.01, except that a veterinarian who only provides services at a temporary site in the state does not have to reside in this state.

3. A description of the services provided at or from the premises.

C. A license is valid only for the responsible veterinarian to whom it is issued. A license is not subject to sale, assignment or transfer, voluntary or involuntary. A license is not valid for any premises other than those for which issued. If there have been major changes in the scope of veterinary services offered, the premises are subject to reinspection.

D. A change of responsible veterinarian or owner shall cancel a premises license. The responsible veterinarian or owner shall surrender the premises license to the board within twenty days of the change in responsible veterinarian or owner. The failure of the responsible veterinarian or owner to notify the board in writing within twenty days of a change in responsible veterinarian or owner is grounds for disciplinary action.

E. Except as provided in section 32-4301, a license expires on December 31 of every even-numbered year unless suspended or revoked. A license is renewable for two years upon payment of the renewal fee. If the renewal fee is not paid before February 1 following the expiration of the license, a penalty fee of one hundred dollars shall be paid in addition to the renewal fee before the premises may be relicensed.

F. Within ninety days of receipt of an initial application and fee, the board shall issue a license if the application demonstrates compliance with this article or shall notify the applicant at his last address of record if the application is not in conformance with this article. Veterinary medical services may be performed at any premises for which an application fee is submitted pending issuance of the license or notification of a deficiency in the application.

G. If a veterinary premises ceases to operate and the premises owner is subject to this chapter, the premises owner must continue to comply with the requirements of this chapter and rules adopted by the board. The premises owner is subject to a civil penalty of not more than one thousand dollars for each violation of the requirements of this chapter or rules adopted by the board. The total penalty shall not exceed five thousand dollars.

H. If the responsible veterinarian is only an employee, the premises owner is subject to a civil penalty of not more than one thousand dollars for each violation of this article. The total penalty shall not exceed five thousand dollars.

32-2273. Premises license fees

The board may establish and collect in advance fees, not to exceed the following:

1. For issuance of a license:

(a) In an odd-numbered year, one hundred dollars.

(b) In an even-numbered year, fifty dollars.

2. For renewal of a license, two hundred dollars.

3. For a duplicate license, twenty dollars.

32-2275. Rules; adoption; considerations

The board may adopt rules setting forth minimum standards for veterinary medical premises and for the practice of veterinary medicine. The board shall, in the development of these rules, take into consideration the needs, problems and practices relating to the differences encountered by large animal veterinarians and other veterinarians and shall also consider the different needs, problems and practices encountered in the provision of veterinary services in rural or remote locations in comparison with the provision of veterinary services at the veterinarian's principal place of business.

32-2281. Dispensing of drugs and devices; conditions; definition

A. A veterinarian may dispense drugs and devices kept by the veterinarian if:

1. All prescription-only drugs are dispensed in packages labeled with the following information:

(a) The dispensing veterinarian's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The animal owner's name and the animal's or herd's identification.

(d) The name, strength and quantity of the drug, directions for its use and any cautionary statements.

2. The dispensing veterinarian enters into the medical record the name, strength and quantity of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

B. A veterinarian dispensing a schedule II controlled substance or a benzodiazepine shall comply with the following:

1. Limit the initial amount of a schedule II controlled substance dispensed by the veterinarian to a five-day supply at a dosage clinically appropriate for the animal being treated. A prescription that is filled at a pharmacy is not subject to this limit.

2. Limit the initial amount of a benzodiazepine dispensed by the veterinarian to a fourteen-day supply at a dosage clinically appropriate for the animal being treated. A prescription that is filled at a pharmacy is not subject to this limit.

3. For treatment of an animal with a chronic condition that requires long-term use of a schedule II controlled substance or benzodiazepine, after the initial five-day or fourteen-day period pursuant to paragraph 1 or 2 of this subsection, dispense not more than a thirty-day supply at one time at a dosage clinically appropriate for the animal being treated. A prescription for a chronic condition that is filled at a pharmacy is not subject to this limit. For the purposes of this paragraph, "chronic condition" means a condition that requires ongoing treatment beyond the five-day or fourteen-day period prescribed in paragraph 1 or 2 of this subsection, including cancer, postsurgical treatment, posttraumatic injury, neuropathic pain, chronic severe cough, collapsing trachea and congestive heart failure.

C. The board shall adopt rules providing that the animal's owner or the person responsible for the animal shall be notified that some prescription-only drugs may be available at a pharmacy and a written prescription may be provided to the animal's owner or the person responsible for the animal if requested.

D. A veterinarian shall dispense only to the animal's owner or person responsible for the animal the veterinarian is treating and only for conditions being treated by that veterinarian. The veterinarian shall supervise the dispensing process. For the purposes of this subsection, "supervision" means that a veterinarian makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding access to and labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a veterinarian of a prescription-only drug or device to an animal, an animal's owner or the person responsible for an animal and includes the prescribing, administering, packaging, labeling, compounding and security necessary to prepare and safeguard the drug or device for delivery.

32-2291. License requirements; inspections

A. An animal crematory license shall be for a fixed location where animal cremation occurs. A person who holds an animal crematory license may provide animal cremation services to the public at the licensed fixed location. There shall be a separate animal crematory license for each fixed location at which animal cremation services are regularly offered to the public.

B. The board shall inspect all fixed locations before issuing an animal crematory license. Adequate equipment and sanitation shall be available for use at any location that is necessary to provide the animal cremation services offered.

C. The board may inspect any animal crematory licensed pursuant to this article.

32-2292. Animal crematory license; application; nontransferability; expiration; renewal

A. Any person who desires to establish premises at or from which animal cremation services are offered to the public shall file with the board an application for an animal crematory license accompanied by the license fee.

B. The application shall be on a form prescribed and furnished by the board and shall contain:

1. The name and location of the animal crematory.

2. The name of the person owning the animal crematory and the name and signature of the person responsible to the board for the operation of the animal crematory.

3. A description of the services provided at or from the animal crematory.

C. A license is not subject to sale, assignment or transfer, voluntary or involuntary. A license is not valid for any animal crematory other than that for which it is issued. If there are major changes in the scope of animal crematory services offered, the animal crematory is subject to reinspection.

D. A change of responsible owner cancels an animal crematory license. The responsible owner shall surrender the animal crematory license to the board within twenty days after the change in responsible owner. The failure of the responsible owner to notify the board in writing within twenty days after a change in responsible owner is grounds for disciplinary action.

E. Except as provided in section 32-4301, a license expires on December 31 of every even numbered year unless suspended or revoked. A license is renewable for two years on payment of the renewal fee. If the renewal fee is not paid before February 1 following the expiration of the license, a penalty fee of one hundred dollars shall be paid in addition to the renewal fee before the animal crematory may be relicensed.

F. Within ninety days after receipt of an initial application and fee, the board shall issue a license if the application demonstrates compliance with this article or shall notify the applicant at the last address of record if the application is not in conformance with this article. Animal cremation services may be performed at any animal crematory for which an application fee is submitted pending issuance of the license or notification of a deficiency in the application.

32-2293. Animal crematory license fees

The board may establish and collect in advance fees for issuance of a license, renewal of a license and a duplicate license. The fees shall be determined by the board and accounted for in accordance with the provisions of section 32-2205.

32-2294. Grounds for refusal to issue or renew license or for disciplinary action; procedure; civil penalty

A. The board may take disciplinary action against the animal crematory, including revoking, suspending, refusing to issue or refusing to renew an animal crematory license for any of the following grounds:

1. Failure to notify the board in writing within twenty days after a change of the person who owns the animal crematory or the person responsible for the operation of the animal crematory.

2. Failure to maintain clean and sanitary facilities for the performance of services in accordance with the rules adopted by the board.

3. Failure to keep written records of all animals receiving crematory services, failure to provide a summary of the records on request to the client or failure to produce the records at the request of the board.

4. Failure to maintain a current animal crematory license to provide crematory services to the public at a fixed location.

B. If the board receives information indicating that disciplinary action should be taken against an animal crematory license and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may hold an informal interview. If the results of the informal interview indicate suspension or revocation of the animal crematory license or other action may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the informal interview and other evidence indicate that disciplinary action should be taken other than suspension or revocation, the board may take any one or a combination of the following actions:

1. Issue a decree of censure.

2. Fix such period and terms of probation as are best adapted to protect the public and rehabilitate or educate the animal crematory licensee. The terms of probation may include temporary suspension not to exceed thirty days. The failure to comply with any term of the probation is cause to consider the entire case and any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not more than one thousand dollars for each violation. The total penalty shall not exceed five thousand dollars.

C. Before a license may be revoked or suspended for any cause provided by subsection A, the board shall serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.

32-2295. Rules

The board may adopt rules setting forth minimum standards for animal crematories.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

APPLICABLE LAW/RULE RELATED TO NOTIFICATION TO PET OWNERS RE: FILLING PRESCRIPTIONS

Within the Arizona Veterinary Medical Practice Act:

A.R.S. 32-2281(C): "The Board shall adopt rules providing that the animal's owner or the person responsible for the animal shall be notified that some prescription-only drugs may be available at a pharmacy and a written prescription may be provided to the animal's owner or the person responsible for the animal if requested."

A.A.C. R3-11-801(A): "A dispensing veterinarian shall notify an animal owner that some prescription-only drugs and controlled substances may be available at a pharmacy by:

A.

1. Stating the availability at or before the time of dispensing;
2. Posting a written statement that is visible to the animal owner; or
3. Providing the animal owner with written notification.

B. A dispensing veterinarian may provide a written, electronic, or telephonic prescription if requested by an animal owner and the dispensing veterinarian:

1. Has a valid doctor-patient relationship with the animal, and
2. Determines that providing the prescription is in the best interest of the animal.

Federal Information:

Since 2011, a Fairness to Pet Owners Act has been introduced in Congress several times, but has not passed. It appears that bills were reintroduced in 2015, 2017-2018 and 2019. The most recent bill required veterinarians to provide pet owners with a copy of animal drug prescriptions prior to filling or dispensing such prescription. Further, veterinarians prescribing animal drugs may not require a pet owner to (1) purchase the prescription as a condition of providing such a copy, (2) pay an additional fee to receive such a copy, or (3) waive the veterinarian's liability as a condition of providing such a copy. Veterinarians would not be required to provide a copy of prescriptions administered in the context of acute care. A veterinarian also may require payment of examination fees prior to prescribing an animal drug if such fees are required regardless of whether the diagnosis reveals an animal drug prescription is necessary.

Other:

The American Veterinary Medical Association's *Principles of Veterinary Medical Ethics* require that veterinarians provide prescriptions to clients upon request in lieu of dispensing a drug when a veterinary-client-patient-relationship exists and the veterinarian has determined that the drug is medically necessary.

ARIZONA STATE PARKS BOARD
Title 12, Chapter 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **STATE PARKS BOARD**
Title 12, Chapter 8, Articles 1-3

Summary

This Five-Year Review Report (5YRR) from the Arizona State Parks Board (Board) relates to the thirty-three (33) rules in Title 12, Chapter 8, Articles 1-3, related to general provisions, board operations, and State Historic Preservation Office (SHPO) programs.

In the Board's previous 5 YRR, the Board indicated that they would amend the rules to improve clearness, conciseness, and understandability. The Board indicated that one rule would be amended to remove an out of date statutory reference. The Board indicated that they intend to submit a NFRM to the Council by July 2020. The Board did not complete their previous course of action as a result of changes to leadership and staff, along with changes to agency processes.

Proposed Action

The Board has indicated that they intend on reviewing the rules during a Board meeting. The Board has also indicated that program staff has been in communication with the Governor's Office about amending the rules along with updating fees. The Board indicated to Council staff that they still intend on completing the previous course of action identified in their last report. The Board indicates that they expect to have a NFR before the Council by 2027.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific statutory authority for these rules

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board states that there are no economic, small business, or consumer impacts to the rules as written. The last economic impact comparison from 2019 indicated there were no significant impacts. The Board indicates that there have been no changes to the rules and there are no changes that would have an economic impact on the rulemaking.

The Board reported in the previous report that the voluntary program for historic property designation and certification places no economic impact on the property owners, public or small business, and that is the same currently. The State Historic Preservation Office Programs (SHPO) rules outline the administrative processes for federal and state law related to historic property designation and certification of properties for historic tax purposes.

Stakeholders include the Board, owners of certified historic properties, and visitors of Arizona state parks.

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

The Board states that these rules do not have an economic impact, and staff have worked to ensure they are meeting statutory directives. The Board believes these rules benefit the public by ensuring the safety and protection of resources and providing recreational, educational and cultural areas for the enjoyment and education of Arizona residents. The Board states that if the rules were not in place, there is an increased risk of costly occurrences that would impact the future enjoyment of the visitors and the pocketbooks of all Arizonans.

4. Has the agency received any written criticisms of the rules over the last five years?

The board 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 Board indicates the rules are clear, concise, and understandable. However the Board also indicates that they intend to update terminology and definitions so the rules can be more clear and more concise. The Board has communicated with Council staff that these amendments will be to fix what was identified in the Board's previous report. The rules that need to be improved from the prior report are the following:

- **R12-8-101 (Definitions):** Since the last update of this rule, the Board has developed cabins and does not call sites cabana in operations. The Board proposes to (1) eliminate "Cabana Site" as antiquated terminology, and camping unit definition can encompass a camping unit with a shelter and electricity available; and (2) modify definition of "camping unit" from "a defined space within an area designed for overnight use in a state park" to "a defined space or structure within an area designed for overnight use in a state park" to clearly encompass the cabins.
- **Exhibit A: Fee Schedule:** The Board indicates the fee schedule may need to be made more accessible for the public. The Board indicates the current schedule does not define the basis for the tiers of cabins and campsites, and does not clearly provide the public guidance regarding the costs that may be assessed for overnight and oversized parking. The Board indicates staff will continue to review the organization and display of the fee schedule to ensure if any changes are necessary within the formal rules to update the guest or potential guests of expectations.
- **R12-8-301 (Definitions); R12-8-302 (Criteria for Evaluation); R12-8-303 (Processes of Registration:** The Board indicates these rules do not clearly delineate the National Register evaluation process. The Board is reviewing to see if clarifying the definitions will improve an applicant to the federal register's understanding of the process.
- **R12-8-304 (Factors for Determining Register Eligibility):** In addition to discussing eligibility, this rule addresses decertification of historic properties. The Board indicates it is evaluating if factors for "Determining Certification Eligibility" should be changed to "Certification of Historic Property Tax Classification" to address the breadth of activities. Since tax verification is by individual property, the Board is examining if (A)(1) should be deleted for clarity.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are consistent with other rules and statutes. However, in the 2019 report the Board mentioned that there was an out of date statutory reference in R12-8-119. After communication with Council staff, the Board stated that this reference is still out of date and the Board intends on removing this reference. This statutory reference is to A.R.S. § 13-3102(F) and is out of date because of amendments to the statute.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates the rules are enforced as written

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

The Board indicates that the rules are not more stringent than corresponding federal law. Council staff has reviewed the corresponding federal law in previous reports and agrees that the rules are not more stringent than corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not Applicable.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona State Parks Board (Board) relates to the thirty-three (33) rules in Title 12, Chapter 8, Articles 1-3, related to general provisions, board operations, and State Historic Preservation Office (SHPO) programs. The Board was unable to complete their prior proposed course of action because of changes to leadership and staff as a result of changes in agency processes. The Board did communicate to Council staff that they still intend on completing these revisions and have not identified any other needs for amendments outside of those identified in the 2019 report. The Board has stated they intend on having a NFR before the Council by 2027.

Council staff recommends that the Council clarify with the Board the timeframe proposed.

Katie Hobbs
Governor

ARIZONA STATE PARKS & TRAILS

Bob Broscheid
Executive Director

October 28, 2024

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

RE: Arizona State Parks Board, Title 12, Chapter 8, Articles 1-3, Five Year Review Report

Dear Chairwoman Klein,

Please find enclosed the Five-Year Review Report of the Arizona State Parks Board for Title 12, Chapter 8, Articles 1-3, which is due on Monday, October 28, 2024.

The Arizona State Parks Board hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact our Chief Legislative Liaison, Brittany Hudson at bhudson@azstateparks.gov or 602-448-3187.

Respectfully,

Bob Broscheid
Executive Director
Arizona State Parks and Trails

Arizona State Parks Board (ASPB)

5 YEAR REVIEW REPORT

Title 12, Chapter 8

October 28, 2024

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-511

Specific Statutory Authority:: A.R.S. § 41-511.02-
A.R.S. § 41-51105

2. The objective of each rule:

Article 1	**General Provisions**
R12-8-101	**Definitions.** Defines terms and phrases used throughout 12 A.A.C. 8.
R12-8-102	**Permission to Enter or Remain in a State Park.** Establishes entry and use of a state park and provides authority for removing and delaying the return of a person in violation of park rules.
R12-8-103	**Vandalism.** Describes that a person shall not vandalize any state park property.
R12-8-104	**Hours of Use; Closure.** Sets the hours of use for various areas in the parks and gives the Director the authority to modify hours.

R12-8-106	**Limited Services on Christmas.** Describes Christmas hours at the state parks.

R12-8-107	**Litter & Waste.** Sets the standards for the disposal of trash, garbage, human or animal waste within a state park.
R12-8-108	**Payment of Fees:** Sets the rules for the collection of fees and charges for the state park system.
R12-8-109	**Fees & Permits.** Sets the fee structure for the use of agency resources and facilities.
R12-8-110	**Fee Waivers.** Allows the Director to waive state park fees.
R12-8-111	**Camping**. Sets the requirements for camping at a state park.
R12-8-112	**Campfires.** Sets the requirements for lighting a campfire in a state park.
R12-8-113	**Vehicles, Speed Limits, and Parking.** Sets the requirements for operating a motor vehicle within a state park.
R12-8-114	**Watercraft, Launching, and Mooring.** Sets the requirements for operating a watercraft at a state park.
R12-8-115	**Pets.** Sets the standards for pets coming into a state park by a patron.
R12-8-116	**Glass Containers.** Prohibits glass or ceramic containers in areas of a state park where they are restricted.
R12-8-119	**Weapons.** Establishes the standards for carrying, transporting, and storage of weapons in a state park.
R12-8-120	**Fireworks & Explosives.** Prohibits the use of fireworks and explosives only if a special permit is authorized by the Director.
R12-8-122	**Commercial Use of a State Park.** Establishes limits surrounding commercial activities within a state park.
R12-8-124	**Disorderly Conduct.** Establishes standards for disorderly conduct within a state park.

R12-8-125	**Special Use Permits.** Sets the requirements for authorizing special use permits within a state park.

R12-8-126	**Violation; Classification.** States that an individual who violates rules commits a misdemeanor.
Exhibit A	**Fees.** Sets the fee ranges for the state park system.

Article 2	**Board Operations**
R12-8- 201	**Meetings.** Sets the requirements for State Park Board meetings.
R12-8- 202	**Organization of the Board.** Sets requirements for the selection of officers for the State Parks Board.
R12-8- 203	**Committees.** Establishes special committees within the State Parks Board.
R12-8- 204	**Procedures at Meetings.** Establishes voting procedures for the State Park Board meetings.

Article 3	**State Historic Preservation Office Programs (SHPO)**
R12-8-301	**Definitions.** Defines terms used in the SHPO.
R12-8-302	**Criteria for Evaluation**. Establishes criteria for evaluating a project as a listed property on the Arizona Register of Historic Places.
R12-8-303	**Process of Registration.** Establishes the processes by which a property is registered as a Historic Property on the Arizona and/or National Register.
R12-8-304	**Factors for Determining Certification Eligibility.** Establishes the factors for determining eligibility for the National Register of Historic Places and certification of historic properties for tax purposes.
R12-8-305	**Verification of Eligibility for Property Tax Reclassification.** Establishes the process for reclassifying properties as Commercial or Non-Commercial Historic Properties.

R12-8-306	**Minimum Maintenance Restoration/Standards.** Establishes standards for properties to maintain eligibility as mandated in statute.

R12-8-307	**Documentation Requirements, Reports, and Inspection.** Establishes the process for an owner of a certified Historic Property to inform SHPO of the requested year's activities.

3. Are the rules effective in achieving their objectives?

Yes, the rules are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes?

Yes, the rules are consistent with other rules and statutes.

5. Are the rules enforced as written?

Yes, the rules are enforced as written.

6. **Are the rules clear, concise, and understandable?**

Yes, the rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years? Yes _ No x**

There have been no written criticisms of the rules within the last five years.

8. **Economic, small business, and consumer impact comparison:**

There are no economic, small business, or consumer impacts to the rules as written. The last economic impact comparison from 2019 indicated there were no significant impacts. There have been no changes to the rules and there are no changes that would have an economic impact on our rulemaking.

The State Parks Board reported in the previous report that the voluntary program for historic property designation and certification places no economic impact on the property owners, public or small business and that is the same currently. SHPO rules outline the administrative processes for federal and state law related to historic property designation and certification of properties for historic tax purposes. These rules do not have an economic impact, and staff has worked to ensure that they are meeting statutory directives.

9. **Has the agency received any business competitiveness analyses of the rules?**

No, ASPB has not received any business competitive analysis of the rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

ASPB proposed to review the rules with the Board to see if any rules needed to be amended on the previous report, however, since the previous report was submitted, ASPB has had a significant change in leadership and staff and an overhaul in agency processes. The agency has not updated rules, but is currently in discussions with the Governor's office to consider adjusting park fees and a possible cleanup of the rule package. The State Historic Preservation Office (SHPO) has also started discussing a clean-up of their rule package as well.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Article 1 General Provisions	These rules benefit the public by ensuring the safety and protection of the resources and providing recreational, educational, and cultural areas for the enjoyment and education of Arizona residents. If the rules were not in place, there is an increased risk of costly occurrences that would impact the future enjoyment of the visitors and the pocketbooks of all Arizonans.
Article 2 Board Operations	The Agency concurs with previous submissions that the cost of the appointed Board is minimal. This cost is outweighed by the benefits of a public body appointed by the Governor to evaluate public input and provide guidance on agency decisions as to the best means of fulfilling the Agency's mission.
Article 3 SHPO Programs	This article benefits the public by providing a transparent process for administrative processes required of the SHPO by state and federal law for the Arizona Register of Historic Places, the National Register of Historic Places, and the State Historic Property Tax Program. These programs make a contribution to the benefits of historic rehabilitation.

12. Are the rules more stringent than corresponding federal laws?

No, the rules are not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The agency does not have rules adopted after July 29, 2010 subject to A.R.S. § 41-1037.

14. Proposed course of action

The authorization for rulemaking rests with the Arizona State Parks Board and there is a process for the Legislature to approve, disapprove, or modify the rules. ASPB staff is in the process of consulting with the Governor's office on possible fee updates and rule changes. Relating to the SHPO Programs rules, SHPO is identifying terminology that needs to be cleaned up and also cleaning up various terms in 12-8-301, 12-8-302, 12-8-303, and 12-8-304 that may improve clarity for potential state or federal historic register applicants. A rule package can be sent to the Board by 2027 considering Parks Board meetings, Parks Board approvals, and the rulemaking process.

Arizona Administrative CODE

12 A.A.C. 8 Supp. 21-2

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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

The reference to the A.A.R. issue and page number for the exempt rulemaking notice codified in Supp. 18-1, Exhibit A, Regular Fee Schedule corrected in Supp. 21-2.

Questions about these rules? Contact:

Name: Timothy Franquist
Address: 23751 N. 23rd Ave., #190
Phoenix, AZ 85085
Telephone: (602) 542-2251
Fax: (602) 542-4180
E-mail: tfranquist@azstateparks.gov
Website: www.AZStateParks.com

The release of this Chapter in Supp. 21-2 replaces Supp. 20-3, 1-13 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 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

Authority: A.R.S. § 41-511 et seq.

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).

Editor's Note: Sections in this Chapter were adopted and amended under an exemption from the provisions of the Arizona Administrative Procedure Act, pursuant to A.R.S. § 41-1005(A)(21). Exemption from this Act means that this Section was not reviewed or approved by the Governor's Regulatory Review Council; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; and no public comment period or public hearings were required to be held on this rule. Because this Chapter contains rules which were adopted under a rulemaking exemption, the Chapter is printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. OPERATION OF THE BOARD

ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS

CHAPTER 8. ARIZONA STATE PARKS BOARD

ARTICLE 1. GENERAL PROVISIONS

R12-8-101. Definitions

In this Chapter:

"Board" means the Arizona State Parks Board.

"Cabana site" means a camping unit with a shelter and electricity available.

"Camp or camping" means overnight use of a camping unit.

"Camping unit" means a defined space within an area designated for overnight use in a state park.

"Commercial activity" means soliciting funds, offering to sell a good or service, advertising, receiving money or another thing of value in exchange for a good, service, or activity, or conducting a business or a portion of a business, whether for profit or on behalf of a non-profit entity, on property managed by the Board. Commercial activity does not include distributing written material that describes how to make a donation at a location that is not on property managed by the Board.

"Concession" means a contract issued by the Board for the use of land managed by the Board to provide goods, services, or facilities to the public.

"Day-use area" means a space within a state park that is closed to camping but open to the public during established hours.

"Director" means the Executive Director of the Board or a representative of the Executive Director.

"Disorderly conduct" has the same meaning as prescribed in A.R.S. § 13-2904.

"Fee area" means a space in a state park for which a fee is charged to use, occupy, or enter.

"Hook-up site" means a camping unit with a connection for water, sewer, or electricity.

"Interpretive program" means a scheduled program conducted by an employee or volunteer of the Board at a state park, to inform, educate, or interpret resources for the public.

"Park Officer" means an employee of the Board who is appointed under A.R.S. § 41-511.09 as a park ranger law enforcement officer with the authority and power of a peace officer.

"Park Ranger" means an employee of the Board responsible for protecting and preserving the property at a state park and providing information services to park visitors.

"Person" means an individual, corporation, firm, partnership, club, or association.

"Service animal" has the same meaning as prescribed in A.R.S. § 11-1024.

"Special use" means the following categories of use of property managed by the Board:

Private special event: A non-public use that requires exclusion of the general public;

Public special event: A commercial activity that is not conducted under a concession or commercial rental or retail permit;

Festival special event: An exhibition, performance, or competition, whether for profit or non-profit, that is open to the public and for which a special entrance fee is charged; and

Commercial photography use: Taking photographs for any medium or making a motion picture or video.

"State-park annual pass" means a document authorizing the holder to enter, remain in, and use state parks multiple times during one year, subject to some restrictions.

"State Park System" or "state park" means the lands, waters, monuments, historical sites, state recreation areas, and any other areas managed by the Board.

"Wildlife" has the same meaning as prescribed in A.R.S. § 17-101.

Historical Note

Former Rule 1; Former Section R12-8-01 repealed, new Section R12-8-01 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-02 renumbered and amended as Section R12-8-101 effective November 1, 1981 (Supp. 81-5). Amended effective March 7, 1991 (Supp. 91-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-102. Permission to Enter or Remain in a State Park

A. A person who enters, remains in, or uses a state park shall comply with state law, including this Chapter.

B. A person who violates state law, including this Chapter, while in a state park shall leave the state park upon order of a Park Ranger or Park Officer.

C. A person who leaves a state park under subsection (B) shall not reenter the state park for at least 72 hours.

Historical Note

Former Rule 2; Former Section R12-8-02 repealed, new Section R12-8-02 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-01 renumbered and amended as Section R12-8-102 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-103. Vandalism

Within a state park, a person shall not deface, injure, destroy, remove, or use, without authority, any:

1. Public facility or property;
2. Wildlife, plant, or animal; or
3. Archaeological, geological, or historical object.

Historical Note

Former Rule 3; Former Section R12-8-03 repealed, new Section R12-8-03 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-03 and R12-8-06 renumbered and amended as Section R12-8-103 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-104. Hours of Use; Closure

A. Camping areas are open to public use at all hours.

B. Day-use areas are open to the public during the hours posted.

C. The Director may temporarily restrict the hours of public use or close all or a portion of a state park in the interest of public safety or to protect the property.

D. The Director may modify the hours of use on a temporary basis to accommodate unusual or seasonal circumstances. The Director shall post any exception to usual hours of public use at the entrance to the state park.

Historical Note

Former Rule 4; Former Section R12-8-04 repealed, new Section R12-8-04 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-04 and R12-8-05 renumbered and amended as Section R12-8-104 effective November 1, 1981 (Supp. 81-5). Amended subsections (A) and (C) effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1). R12-8-104(A) corrected as filed at the request of the Board on May 29, 2014; published at 13 A.A.R. 1119 (Supp. 14-4).

R12-8-105. Repealed

Historical Note

Former Rule 5; Former Section R12-8-05 repealed, new Section R12-8-05 adopted effective January 28, 1976 (Supp. 76-1). Amended effective June 29, 1979 (Supp. 79-3). Former Section R12-8-05 renumbered and amended as Section R12-8-105 effective November 1, 1981 (Supp. 81-5). Amended effective March 23, 1990 (Supp. 90-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Section repealed by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-106. Limited Services on Christmas

State park facilities are not staffed on Christmas except in an emergency. On Christmas, caves, museums, contact stations, and visitor centers are closed. Other state park areas are open for public use as posted.

Historical Note

Former Rule 6; Former Section R12-8-06 repealed, new Section R12-8-06 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-05 renumbered and amended as Section R12-8-106 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-107. Litter and Waste

A. Within a state park, a person shall not leave or discard trash, garbage, or human or animal waste unless the person:
1. Confines the trash, garbage, or human or animal waste in a sanitary manner; and
2. Deposits the trash, garbage, or human or animal waste in a facility specifically designated to receive it.

B. Within a state park, a person shall not deposit trash, garbage, or human or animal waste collected from a private residence, business, or other place outside the state park.

Historical Note

Former Rule 7; Former Section R12-8-07 repealed, new Section R12-8-07 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-14 renumbered and amended as Section R12-8-107 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-108. Payment of Fees

A. Before entering, remaining in, or using a fee area, a person shall:
1. Pay the required fee,
2. Purchase a current state-park annual pass, or
3. Obtain permission from the Director.

B. A fee paid under subsection (A)(1) to enter, remain in, or use one state park does not authorize entering, remaining in, or using another state park.

Historical Note

Former Rule 8; Former Section R12-8-08 repealed, new Section R12-8-08 adopted effective February 1, 1976 (Supp. 76-1). Amended effective June 30, 1978 (Supp. 78-3). Former Section R12-8-07 renumbered and amended as Section R12-8-108 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The Arizona State Parks Board amended this Section effective March 2, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 98-1).

Editor's Note: The Arizona State Parks Board amended this Section effective January 1, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 97-4).

Editor's Note: The Arizona State Parks Board repealed the old Section text as specified in the following Editor's Note, effective January 12, 1996, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 96-1).

Editor's Note: The Arizona State Parks Board adopted a new R12-8-109 under an exemption from the provisions of the Arizona Administrative Procedure Act but did not repeal the old rule. Therefore the text of both the old Section and the new Section appear here, with the old Section appearing first and the new Section appearing second. The agency will repeal the old text in January 1996.

Editor's Note: The following Section was amended under an exemption from the provisions of the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not reviewed by the Governor's Regulatory Review Council or the Attorney General; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; and no public comment period or public hearings were required to be held on this rule.

Editor's Note: The following Section was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act.

R12-8-109. Fees and Permits

A. Annual fee review. The Board shall annually review and set fees for entrance, camping, and overnight parking at a state

park. The Board shall base the fees upon an analysis of the following criteria:
1. Fee and permit charges of state park agencies in the 11 western states,
2. Fee and permit charges of entities with similar facilities within Arizona,
3. Operational and developmental costs of the Board,
4. Public demand for services, and
5. Public-use impacts upon park resources.

B. The Board shall ensure that fees for entrance, camping, and overnight parking are posted at each state park and printed in state-park literature intended for public information.

C. Fee schedule. Entrance, camping, and overnight parking fees for each state park are listed in Exhibit A.

D. Special use fees. The Director shall negotiate a fee for a special use if the Director determines that a fee greater than the fee listed in Exhibit A is justified based upon analysis of the following criteria:
1. Board expenses resulting from the special use,
2. Loss of revenue resulting from the special use,
3. Impacts upon park resources and visitors as a result of the special use, and
4. The goodwill produced for sponsors of the special use.

E. Interpretive program fees. The Director may establish a special fee for or waive the usual state park entrance fee during an interpretive program. The Director shall determine whether to assess a special fee or waive the usual state park entrance fee for an interpretive program using the criteria specified in subsection (D). If the Director establishes a special fee for an interpretive program, the Director shall ensure that the special fee is posted and printed in state-park literature in advance of the interpretive program.

F. Commercial permit. A person that intends to enter a state park to conduct any portion of a business that is not covered by a concession or special use permit shall obtain either a commercial retail or commercial rental permit from the Board before entering the state park. A commercial permit authorizes one commercial vehicle carrying no more than four individuals to enter the state park for which the commercial permit is issued.

Historical Note

Former Rule 9; Former Section R12-8-09 repealed, new Section R12-8-09 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-08 renumbered and amended as Section R12-8-109, subsections (A), (B) and (D), effective November 1, 1981, subsection (C) effective January 1, 1982 (Supp. 81-5). Amended by adding subsection (E) effective July 12, 1984 (Supp. 84-4). Amended subsections (B) and (D) and added subsection (F) effective January 1, 1985 (Supp. 84-6). Amended effective April 22, 1988 (Supp. 88-2). Repealed due to legislative exemption which was amended into the Arizona Administrative Procedure Act. New Section adopted effective January 1, 1994, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 28, 1993 (Supp. 93-4). Amended effective January 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(21); filed in the Office of the Secretary of State December 23, 1994 (Supp. 95-3). New Section adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-1005(A)(21); filed in the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Text of Section in effect before January 1, 1996, repealed effective January 11, 1996, pursuant to an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-1005(A)(21) (Supp. 96-1). Amended effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 13, 1998 (Supp. 98-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The Arizona State Parks Board amended this Section effective January 1, 1998, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council (Supp. 97-4).

Editor's Note: The Arizona State Parks Board repealed the old Section text as specified in the following Editor's Note, effective January 12, 1996, under an exemption from the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not submitted to the Office of the Secretary of State for publication as a proposed rule in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the rule was not reviewed or approved by the Governor's Regulatory Review Council. (Supp. 96-1).

Editor's Note: The Arizona State Parks Board adopted a new R12-8-109 under an exemption from the provisions of the Arizona Administrative Procedure Act but did not repeal the old rule. Therefore the text of both the old Section and the new Section appear here, with the old Section appearing first and the new Section appearing second. The agency will be repealing the old text soon.

Editor's Note: The following Section was adopted under an exemption from the provisions of the Arizona Administrative Procedure Act. Exemption from this Act means that this Section was not reviewed by the Governor's Regulatory Review Council; notice of this rule was not submitted to the Office of the Secretary of State for publication in the Arizona Administrative Register; no public comment period or public hearings were required to be held on this rule; and the Attorney General has not certified this rule.

R12-8-110. Fee Waivers

A. The Director may waive the entrance fee listed in Exhibit A for the following groups. If the Director does not waive the entrance fee, members of the group shall pay the entrance fee listed in Exhibit A:
1. A preschool or K-12 school group and accompanying chaperons;
2. A group of professional individuals participating in a parks and recreation, historic, or interpretive seminar or conference tour; and
3. A group of disabled individuals affiliated with an organization or agency established to care for, rehabilitate, train, or serve the disabled individuals. For the purpose of this subsection, disabled means blind or visually impaired,

deaf or hard of hearing, mobility impaired, or developmentally impaired.

B. An individual who serves as a volunteer and has a signed volunteer agreement with the Board is exempt from entrance fees listed in Exhibit A.

C. The Director may modify any fee prescribed under R12-8-109 to grant a discount or promotional rate.

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Repealed due to legislative exemption which was amended into the Arizona Administrative Procedure Act. New Section adopted effective January 1, 1994, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 28, 1993 (Supp. 93-4).Adopted effective January 1, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act; filed in the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Text of Section in effect before January 1, 1996, repealed effective January 11, 1996, pursuant to an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-1005(A)(21) (Supp. 96-1). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-111. Camping

A. Camping is permitted only in a designated camping unit.

B. Except when camping at a Board-approved concession area within a state park, a person using a camping unit shall not:

1. Camp in a state park for more than 15 days within a 30-day period unless authorized by the Director;
2. Camp in a state park for more than 29 days within a 45-day period that is posted as a long-term stay period unless authorized by the Director;
3. Leave an occupied camping unit unattended overnight without written permission from the Director; or
4. Allow the number of persons occupying a camping unit or the number of vehicles in the camping unit to exceed the limits posted at the entrance to the state park or camping unit.

C. A camping unit is considered occupied after the use fee is paid and the camper establishes a conspicuous presence. A person shall not occupy a camping unit in violation of instructions from the Director or if there is reason to believe that the camping unit is occupied by another camper.

D. A Park Ranger shall allow the occupants of a single vehicle to register for more than one camping unit only if the number of occupants exceeds the posted occupancy limit for the camping unit.

E. A person shall pay the fee for a permit to use a camping unit on a per-day basis. Payment authorizes use of the camping unit until 2:00 p.m. on the day the permit expires.

F. A person shall remove all personal property from a camping unit by 2:00 p.m. on the day that a permit expires or purchase an additional permit if eligible under subsection (B).

Historical Note

Former Rule 11; Former Section R12-8-11 repealed, new Section R12-8-11 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-09 and R12-8-10 renumbered and amended as Section R12-8-111 effective November 1, 1981 (Supp. 81-5). Amended subsection (A), Paragraph (1) effective November 27, 1987 (Supp. 87-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-112. Campfires

A. A person shall ignite an outdoor fire only in a camping unit or day-use area specifically designated for an outdoor fire.

B. A person who ignites an outdoor fire shall ensure that the fire is confined to a grill, fire ring, or other facility provided by the state park.

C. A person shall not ignite or maintain a fire when a high wind is blowing or when open burning is prohibited by order of the Director.

D. A person who ignites an outdoor fire shall ensure that the fire is attended and controlled at all times.

Historical Note

Former Rule 12; Former Section R12-8-12 repealed, new Section R12-8-12 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-11 renumbered and amended as Section R12-8-112 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-113. Vehicles, Speed Limits, and Parking

A. The operator of a motor vehicle within a state park shall drive the motor vehicle only on a maintained roadway, parking area, or other area designated by signs for motor vehicle use.

B. The operator of a motor vehicle within a state park shall comply with all state law regarding operation of a motor vehicle and shall not drive the motor vehicle at a speed greater than is reasonable and prudent under the circumstances and conditions or in excess of a posted limit.

C. The operator of a motor vehicle within a state park shall not park or leave the motor vehicle unattended except in a designated parking area or parking zone. The Director may remove an unattended motor vehicle that is illegally parked or left standing upon a roadway or in a park area in a manner that may obstruct traffic or impair normal activities of the state park.

Historical Note

Former Rule 29; Former Section R12-8-13 repealed, new Section R12-8-13 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-12 renumbered and amended as Section R12-8-113 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-114. Watercraft; Launching and Mooring

A person shall not moor or launch a watercraft from a shore within a state park if the Director has determined that it is in the best interest of the state park to prohibit mooring or launching of watercraft and has posted notice of the prohibition at the shore.

Historical Note

Former Rule 14; Former Section R12-8-14 repealed, new Section R12-8-14 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-13 renumbered and amended as Section R12-8-114 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-115. Pets

A. Except as provided in subsection (B), a person shall keep a dog, cat, or other pet on a leash that does not exceed six feet or otherwise restrain the animal while in a state park.

B. The restraint requirement in subsection (A) does not apply to a dog in an area open to hunting or field trials if the dog is participating in these activities.

C. A person shall not take a pet into a state park building, cabana site, developed beach, or other area that the Director has determined is environmentally or ecologically sensitive. This restriction does not apply to a service animal.

Historical Note

Former Rule 15; Former Section R12-8-15 repealed, new Section R12-8-15 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-15 renumbered and amended as Section R12-8-115 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-116. Glass Containers

A person shall not possess a glass or ceramic container in a state park area that is designated as a public beach or swimming area, or posted "No Glass Containers."

Historical Note

Adopted effective January 3, 1989 (Supp. 89-1). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-117. Reserved

R12-8-118. Reserved

R12-8-119. Weapons

A. The following definitions apply to this Section:

1. "Improved recreation area" means a camping unit, roadway, amphitheater, boat launching ramp, developed picnic area, developed swimming beach, and any other area within a state park that is designated by the Director and reserved for an assembly or other temporary gathering of persons.
2. "Prohibited weapon" means a firearm as defined by A.R.S. § 13-3101, including a BB or pellet gun, bow, or slingshot.

B. A peace officer or private security guard employed by the holder of a park concession is authorized to carry a firearm in a state park if:

1. The peace officer is certified under state law, or
2. The holder of the park concession complies with A.R.S. § 32-2606(3) regarding private security guards.

C. Unless authorized under subsection (B), a person shall not enter or remain in an improved recreation area while carrying a prohibited weapon after a reasonable request from a park ranger to remove it. A request to remove a prohibited weapon is reasonable if a park ranger believes that the person carrying the prohibited weapon poses a danger or threat to others lawfully present. If, after a reasonable request is made, a person carrying a prohibited weapon within an improved recreation area chooses to remain in the improved recreation area, the person shall place the weapon in the custody of a park ranger until the person leaves the improved recreation area.

D. A firearm may be transported or stored in a vehicle on any state park area as allowed by A.R.S. § 13-3102(F).

E. A hunter who holds a current license issued by the Arizona Game and Fish Department may carry a lawful hunting weapon in any state park area designated for hunting and may carry the hunting weapon through the state park to reach the state park area designated for hunting.

Historical Note

Adopted effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-120. Fireworks and Explosives

A person shall not discharge fireworks or any other explosive device within a state park without first obtaining from the Director a special use permit that authorizes the discharge of fireworks or any other explosive device.

Historical Note

Former Rule 20. Former Section R12-8-20 repealed, new Section R12-8-20 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-20 renumbered and amended as Section R12-8-120 adopted effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-121. Reserved

R12-8-122. Commercial Use of a State Park

A. A person shall not engage in a commercial activity within a state park unless the commercial activity is authorized by:

1. A special use permit issued under R12-8-125,
2. A concession, or
3. A commercial rental or retail permit.

B. Subsection (A) does not apply to an individual who enters a state park in a commercially marked vehicle if the individual intends to, provide service to the holder of a special use permit, concession, or commercial rental or retail permit, or respond to an emergency.

Historical Note

Former Rule 22. Former Section R12-8-22 repealed, new Section R12-8-22 adopted effective January 28, 1976 (Supp. 76-1). Former Sections R12-8-22 and R12-8-23 renumbered and amended as Section R12-8-122 effective November 1, 1981 (Supp. 81-5). Amended subsection (A) effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-123. Reserved

R12-8-124. Disorderly Conduct

A. A person shall not engage in disorderly conduct within a state park.

B. Within a state park, a person shall not knowingly disturb the peace of an area or another person, make unreasonable noise, engage in violent behavior, use provocative language or gestures, or recklessly handle, display, or discharge a deadly weapon or dangerous instrument.

C. A person shall not use a loudspeaker in a state park without first obtaining from the Director a special use permit that authorizes the use of a loudspeaker.

Historical Note

Former Rule 24. Former Section R12-8-24 repealed, new Section R12-8-24 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-24 renumbered and amended as Section R12-8-124 effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-125. Special Use Permits

A. Special use permit required. Within a state park, a person shall obtain a special use permit from the Board before:
1. Engaging in an activity that is prohibited by this Chapter without a permit;
2. Excluding the general public from an area or facility within the state park;
3. Engaging in a commercial activity not covered by a concession or commercial rental or retail permit;
4. Engaging in a spectator event designed to attract a large crowd;
5. Engaging in an activity that requires a permit from another entity such as the Coast Guard, Arizona Game and Fish Department, or a city, county, or municipality;
6. Engaging in an activity that requires a reservation outside an area designated for use by reservation; or
7. Using a state park area for a purpose different from that for which the area is designated.

B. General terms and conditions. The Board shall issue a special use permit only subject to the following general terms and conditions:
1. An application for the special use permit is submitted less than one year before the planned special use;
2. The special use permit may be revoked if the Board determines that the permit holder fails to comply with state park statutes, this Chapter, and all Board policies that are terms of the special use permit;
3. The special use permit does not conflict with a concession without written approval from the concession holder;
4. The special use permit is issued to the first person that applies for a special use permit for a particular day at a particular location;
5. The special use permit is issued only after the applicant complies with any indemnity and insurance requirements that the Board determines are necessary to protect the state;
6. The special use permit is issued only after the applicant pays required fees or obtains a fee waiver under R12-8-110;
7. The special use does not conflict with the Board's management goals for the state park; and
8. The special use does not create a safety hazard to participants, spectators, or the general public.

C. Private special event. The Board shall issue a special use permit for a private special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a private special event requests the special use permit for no more than seven consecutive days of use and no more than 14 days of use in a calendar year;
2. The private special event does not significantly interfere with the public's use of the state park; and
3. The person holding a special use permit for a private special event does not engage in commercial activity within a state park.

D. Public special event. The Board shall issue a special use permit for a public special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a public special event requests the special use permit for no more than four consecutive days of use in a calendar quarter and no more than 16 days of use in a calendar year at a particular state park; and
2. No more than two special use permits for a public special event are issued per day per state park.

E. Festival special event. The Board shall issue a special use permit for a festival special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a festival special event requests the special use permit at least 120 days before the festival special event if no more than 1,500 people are expected to attend each day of the festival special event or at least 180 days before the festival special event if more than 1,500 people are expected to attend each day;
2. The person requesting a special use permit for a festival special event requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park;
3. No more than one special use permit for a festival special event is issued per day per state park;
4. The person requesting a special use permit for a festival special event provides to the Board a detailed plan regarding security, sanitary facilities, medical services, parking, food and drink facilities, booths, and sponsorships at least 90 days before the festival special event; and
5. The person requesting a special use permit for a festival special event obtains all permits required by other entities such as a city, county, municipality, or agency and submits a copy of all permits to the Board at least 30 days before the festival special event.

F. Commercial photography special use. The Board shall issue a special use permit for commercial photography only subject to the following specific terms and conditions:
1. The person requesting a special use permit for commercial photography requests the special use permit at least 30 days before the commercial photography event;
2. The person requesting a special use permit for commercial photography requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park; and
3. The person holding a commercial photography special use permit does not engage in commercial activity within a state park.

Historical Note
Former Rule 25; Former Section R12-8-25 repealed, new Section R12-8-25 adopted effective January 28, 1976 (Supp. 76-1). Former Section R12-8-25 renumbered and amended as Section R12-8-125 effective November 1, 1981 (Supp. 81-5). Amended subsections (A) and (C) effective November 27, 1987 (Supp. 87-4). Amended effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6; filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-126. Violation; Classification
Under A.R.S. § 41-511.13, an individual who violates a provision of this Chapter commits a class 2 misdemeanor.

Historical Note
Adopted effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

Exhibit A. May 1, 2018, Regular Fee Schedule

ARIZONA STATE PARKS FEE SCHEDULE

EFFECTIVE MAY 1, 2018

1: Adult is defined as an individual 14 years of age and older.
2: Camping fees reflect a "Range" dependent upon specific site location and seasonality. Call individual Park facility for current information.
4: Over-sized Parking is an additional fee for those vehicles or vehicle/trailer units that exceed 55' in total length.
5: Additional Program Fees may apply, see "OTHER FEES."
6: For Lodge, Cabins & Yurts an additional overnight fee of $5.00 per pet per night will be assessed.
7: Camping by Reservation only. Contact the Park Facility directly for availability and details.

These fees are charged on a "per vehicle" basis that includes up to 4 Adults per vehicle. Additional fees for vehicles containing more than 4 Adults will be assessed.

50% discount off regular entrance fee for Active Duty, National Guard or Reserve members of the United States Military, Arizona residents who are United States Military Retired or Service Disabled Veterans and their families.

100% discount off regular entrance fee for Arizona residents who are 100% Service Disabled Veterans and their families. Does not apply to Kartchner Caverns State Park tour tickets, special use fees, special event fees, special event admission fees, reservation fees, camping or overnight parking.

	DAILY ENTRANCE			NIGHTLY CAMPING[2]								
PARK NAME	Per Vehicle 1-4 Adults[1]	Individual/Bicycle	Over-Size Parking[4]	Non-Electric Campsite	Electric Site	Premium	Standard	Rustic	Unique	Cabin[6]	Yurt[6]	Lodge[6]
ALAMO	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
BOYCE THOMPSON	(Separate Fee Schedule)											
BUCKSKIN MOUNTAIN	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	50 – 300.00		
BUCKSKIN RIVER ISLAND	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
CATALINA	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
CATTAIL COVE	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	50 – 300.00		
Boat-In sites Day Use only	10.00					15 – 50.00	15 – 50.00	15 – 50.00				
DEAD HORSE RANCH	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
FOOL HOLLOW	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
HOMOLOVI	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
KARTCHNER (Daily Entrance Fee is waived for reserved tour ticket holders)	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
LAKE HAVASU	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
LOST DUTCHMAN	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
LYMAN LAKE	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00	35 – 50.00	
ORACLE[5]	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
PATAGONIA LAKE	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00	50 – 300.00		
PICACHO PEAK[5]	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
RED ROCK[5]				(educational groups only: 15 – 25.00/group of 1-6 persons)								
ROPER LAKE	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
ROCKIN RIVER RANCH	5 – 30.00	2 – 5.00	10.00	15 – 25.00	20 – 50.00	15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		
SLIDE ROCK[5]	5 – 30.00	2 – 5.00										
SONOITA CREEK[7]				15 – 25.00		15 – 50.00	15 – 50.00	15 – 50.00				
TONTO NATURAL BRIDGE						15 – 50.00	15 – 50.00	15 – 50.00		50 – 300.00		400 – 1500.00

Children ages 0-6, when accompanied by a paying adult age 18 years or older, will be admitted free as long as the child is not part of an organized group. Group discounts maybe available where listed. A group is 15 persons or more with prearranged arrival. All persons in a group, regardless of age, apply toward a group's number. Group discounts do not apply to Program Fees.

	DAILY ENTRANCE FEES			GROUP FEES
PARK NAME	Ages 0-6	Ages 7-13	Ages 14 & up	Ages 14 & up
FORT VERDE[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
JEROME[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
MCFARLAND[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
RED ROCK[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
TOMBSTONE[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
TONTO NATURAL BRIDGE	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
TUBAC PRESIDIO[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
YUMA QUARTER MASTER DEPOT[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate
YUMA TERRITORIAL PRISON[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate

Group discounts are available where listed. A group is 15 persons or more with prearranged arrival. All persons in a group, regardless of age, apply toward a group's number.

	DAILY ENTRANCE FEES			GROUP FEES	
PARK NAME	Ages 0-6	Ages 7-13	Ages 14 & up	Ages 7-13	Ages 14 & up
RIORDAN MANSION[5]	free	2.00 – 10.00	2.00 – 10.00	20% off current rate	20% off current rate

KARTCHNER CAVERNS

TOURS	Ages 0 – 6	Ages 7 – 13	Ages 14 & Up
Rotunda Tour	free	9 – 15.00	18.00 – 30.00
Big Room Tour	n/a	9 – 15.00	18.00 – 30.00

COMMERCIAL GROUP TOURS*	Ages 0 – 6	Ages 7 – 13	Ages 14 & Up
Rotunda Tour	free	20% off current rate	20% off current rate
Big Room Tour	n/a	20% off current rate	20% off current rate

*A commercial tour is pre-arranged by a commercial tour operator who organizes tours in a package with transportation and a destination or tour for one price. A group tour for Kartchner Caverns cave tour is defined as 12 persons or more.

OTHER FEES

Pet Fee for Cabins & Yurts	5.00	per pet per night.
Overnight Parking	*Over-night Parking is described as: "A legally parked, unattended and unoccupied vehicle not in a designated campsite, remaining on the park throughout the night." The overnight parking fee is to be charged in addition to the regular Entrance Fee.*	

PASSES

Arizona State Parks Premium Annual Entrance Pass	200.00	*"Valid at all State Parks for day-use activities only. Additional Program and Special Event Fees may apply."*
Arizona State Parks Standard Annual Entrance Pass	75.00	*"Valid at all Arizona State Parks facilities for day-use activities. Not valid from April 1st through October 31st at Buckskin Mountain/River Island, Cattail Cove and Lake Havasu State Parks on Fridays, Saturdays, Sundays, and recognized State Holidays. Additional Program and Special Event Fees may apply."*

PROGRAM FEES (per person or vehicle)

Students Program:	Variable
Event / Program Fees	Variable
Instructional:	Variable

RESERVATIONS

Kartchner Tours:	3.00
Kartchner Tours Rebooking:	5 – 25.00
Camping, Cabin, Yurt, Ramada, Lodge:	5 – 25.00
Group:	5 – 25.00

SPECIAL USE FEES

Non-Commercial:	25.00 (minimum)
Commercial:	25.00 (minimum)
Damage Deposit:	25.00 (minimum)

FACILITY USE FEES

Ramada	15.00 (minimum)
Group Day Use	15.00 (minimum)
Group Camping	15.00 (minimum)

Dump Station Use	15 – 20.00	Use of a parks dump station without being a registered camper will be equal to one night's camping (low end of the individual Park's range)

PERMITS

Commercial Retail Permit:	300.00	*CONDITIONS OF USE* *• Pass is valid only for customers entering the park in the commercial vehicle.* *• Individual pass must be presented each time the commercial vehicle enters the park with passengers.* *• Pass does not permit any private vehicle to enter the park.* *• Pass is valid through the calendar year in which it was purchased.* *• Pass must be used in conjunction with commercial business pass.* *• One voucher permits up to 4 adults in the same commercial vehicle.* *• Violation of Conditions of Use may result in revocation of all commercial privileges.* *• All Commercial Vehicle Access Permits expire December 31 of the year for which they were issued.* *• Permittee clientele will be responsible for all applicable daily entrance fees when entering the park in a separate vehicle from the permittee. However, a discounted Clientele Voucher is available for all permittee clientele who enter the park in the permittee's vehicle and do not occupy a parking space.*
Commercial Rental Permit:	350.00	
2nd Commercial Permit:	150.00	
Clientele Voucher:	5.00	*Vouchers are sold only to Permit holders. Vouchers can only be used at the time of entry, and are non-transferable.*

Historical Note

Adopted effective January 1, 1997, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 9, 1996 (Supp. 96-4). Amended effective January 1, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State December 11, 1997 (Supp. 97-4). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 13, 1998 (Supp. 98-1). Amended effective March 2, 1998, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State February 23, 1998 (Supp. 98-1). Amended effective January 1, 1999, under an exemption from A.R.S. Title 41, Chapter 6, specified in A.R.S. § 41-511.05(8); filed in the Office of the Secretary of State November 24, 1998 (Supp. 98-4). Amended by exempt rulemaking at 5 A.A.R. 2173, effective July 1, 1999 (Supp. 99-2). Amended by exempt rulemaking at 7 A.A.R. 5712, effective January 1, 2002 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 3657, effective July 31, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3828, effective August 6, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 569, effective March 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 10 A.A.R. 1889, effective April 13, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 2602, effective June 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4186, effective October 1, 2004 (Supp. 04-3). Amended by exempt rulemaking at 12 A.A.R. 1700, effective March 1,

2006 (Supp. 06-2). Amended by exempt rulemaking at 14 A.A.R. 422, effective January 1, 2008 (Supp. 08-1). Amended by exempt rulemaking at 14 A.A.R. 4535, effective January 1, 2009 (Supp. 08-4). Amended by exempt rulemaking at 16 A.A.R. 293, effective March 1, 2010 at Department Request, Office File No. M11-81, filed March 8, 2011 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 1998, effective December 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 18 A.A.R. 629, effective April 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 19 A.A.R. 3148, effective November 1, 2013 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 4222, effective January 1, 2014 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 3561, effective February 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 24 A.A.R. 699, effective May 1, 2018 (Supp. 18-1). The reference to the A.A.R. issue and page number for the exempt rulemaking notice codified in Supp. 18-1, Exhibit A corrected in Supp. 21-2.

ARTICLE 2. OPERATION OF THE BOARD

R12-8-201. Meetings

A. There shall be a minimum of one meeting of the Arizona State Parks Board during each calendar year quarter.

B. The time and place of a meeting shall be designated seven days before the meeting date by either:
1. The Chairman verbally informing the Director or,
2. Any four members informing the Director in writing, except that in the case of an emergency, the Director may be verbally informed.

C. The Director, upon being informed of the time and place of a meeting shall:
1. Inform each member of the time and place of the meeting at least five days before the meeting date.
2. Prepare a written agenda consisting of the time and place of the meeting and an outline of the business to be considered. The agenda shall be verbally accepted by the Chairman or the members who set the meeting before it is distributed.
3. Transmit the agenda to each Board Member and post the agenda in the administrative headquarters of the Board and at the headquarters area of each operational State Park at least two days before the meeting date.
4. Prepare explanatory material concerning the business contained on the agenda and transmit the material to each Board Member.

D. In the case of an emergency, the time requirements of subsections (B) and (C) above may be adjusted to the circumstances.

Historical Note
Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-50 renumbered as Section R12-8-201 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-202. Organization of the Board

A. Selection of Officers
1. At the first meeting following January 1 of each year, the members present shall select by majority vote a Chairman and a Vice Chairman to serve through the first meeting following January 1 of the year following.
2. If a vacancy in either the Chairman or Vice Chairman office of the Board occurs, the members present at the first meeting following the occurrence of the vacancy shall select a member by majority vote to fill the unexpired term of the officer.
3. If the Chairman and Vice Chairman are absent from a meeting of the Board held in accordance with these rules, a Presiding Officer shall be selected by majority vote of the members present.

B. Duties of the officers are as follows:
1. The Chairman shall preside over all meetings and functions of the Board.
2. The Vice Chairman shall take over the duties of the Chairman if the Chairman is absent.
3. The Presiding Officer shall take over the duties as Chairman if the Chairman and Vice Chairman are absent.

Historical Note
Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-51 renumbered as Section R12-8-202 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-203. Committees

A. There shall be no standing committees.

B. Special committees may be appointed by the Chairman to make reports to the Board concerning matters of interest to the Board.

Historical Note
Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-52 renumbered as Section R12-8-203 without change effective November 1, 1981 (Supp. 81-5).

R12-8-204. Procedures at Meetings

A. All actions of the Board shall be by majority vote of the membership present.

B. Board meetings shall be conducted under Roberts Rules of Order.

Historical Note
Adopted effective August 8, 1977 (Supp. 77-4). Former Section R12-8-53 renumbered as Section R12-8-204 without change effective November 1, 1981 (Supp. 81-5). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-205. Repealed

Historical Note
Adopted effective June 29, 1979 (Supp. 79-3). Former Section R12-8-54 renumbered as Section R12-8-205 without change effective November 1, 1981 (Supp. 81-5). Section repealed by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-206. Repealed

Historical Note
Adopted effective August 26, 1983 (Supp. 83-4).

R12-8-207. Board Concession Approval Policy

A. The Board may enter into agreement with a private or public entity for the operation and development of a concession in an area under the jurisdiction of the Board subject to the following conditions:
1. The proposed concession activity shall be consistent with a Board-approved master plan for development and operation of the park in which the concession is to be located. The plan shall include any amendments or other Board activity.
2. The proposed concession activity shall be consistent with the purposes of the Board as defined by statute.

3. The Board determines that there is a need for the proposed type of concession operation and that the proposed concession activity is in the best interest of the state.
4. The Board issues a formal request for proposals from persons interested in operating a concession.
5. The Board determines that the concession operator selected is most advantageous to the state according to the criteria identified in the request for proposals.

B. The Board shall publish notice of a request for proposals for a concession in accordance with A.R.S. § 41-2533(C). In addition, the Board shall provide notice of a request for proposals at the last known address of each person who has, within the last year, expressed in writing to the Board an interest in operating a concession of the particular nature being noticed.

C. A copy of this rule shall be provided by the Board to each person who submits a concession proposal without prior issuance by the Board of a formal request for proposals for a concession.

D. The Board may exempt an existing concession renewal, consignment agreement, vending agreement, or agreement with a nonprofit organization or a local historical society from the procedures contained in this rule.

Historical Note
Adopted effective July 12, 1984 (Supp. 84-4). Amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS

R12-8-301. Definitions

In this Article, unless the context otherwise requires:

1. "State Historic Preservation Officer" or "Officer" means an employee of the Board who has professional competence and expertise in the field of historic preservation and administers the State Historic Preservation Program.
2. "Arizona Register of Historic Places," "Arizona Register," or "Register" means the state's list of Arizona's historic properties worthy of preservation that serves as an official record of Arizona's historic districts, sites, buildings, structures, and objects of national, state, or local significance in the fields of history, architecture, archaeology, engineering, or culture. Properties listed on or eligible for the Arizona Register of Historic Places may also be eligible for listing on the National Register of Historic Places.
3. "National Register of Historic Places" means the official national list of historic districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, or culture.
4. "Historic Sites Review Committee" or "HSRC" means a standing committee of the Arizona Historical Advisory Commission, which is appointed by the State Historic Preservation Officer under A.R.S. § 41-1352 to review nominations of properties for listing on the National or Arizona Register of Historic Places.
5. "Historic property" means a building, site, district, object, or structure evaluated by the HSRC as historically significant.
6. "State Historic Preservation Office" or "SHPO" means the program staff that work under the supervision of the Officer.

Historical Note
Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-60 renumbered as Section R12-8-301 without change effective November 1, 1981 (Supp. 81-5). Amended effective August 26, 1983 (Supp. 83-4). Former Section R12-8-301 renumbered to R12-8-304; new Section R12-8-301 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-302. Criteria for Evaluation

A. Before listing a property in the Register, the State Historic Preservation Office (SHPO), with the advice of the HSRC, will apply the following criteria for evaluating the property:

1. The property conveys significance in one or more of the following contexts: national, state or local history, architecture, archaeology, engineering, or culture;
2. The property is classified as one of the following types: district, site, building, structure, or object;
3. The property possesses integrity of location, design, setting, materials, workmanship, feeling, or association; and
4. The property:
   a. Is associated with an event that made a significant contribution to the broad pattern of history;
   b. Is associated with the life of a historically significant person;
   c. Embodies a distinctive characteristic of a type, period, or method of construction, represents the work of a master, possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction; or
   d. Has yielded or is likely to yield important pre-historical or historical information.

B. The SHPO shall not consider eligible for the Register any property that has achieved significance within the past 50 years unless the property is an integral contributing element of a district that meets the criteria in subsection (A) or the property demonstrates exceptional individual importance.

Historical Note
Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-61 renumbered as Section R12-8-302 without change effective November 1, 1981 (Supp. 81-5). Amended effective August 26, 1983 (Supp. 83-4). Former Section R12-8-302 renumbered to R12-8-305; new Section R12-8-302 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-303. Processes of Registration

A. The State Historic Preservation Officer shall serve as the keeper of the Register.

B. Before listing a property in the Register, the SHPO requires the following:

1. The Historic Property Inventory (HPI) form must be completed by the proponent or owner to determine whether the property is eligible for listing;
2. The Recommendation of Eligibility form must be completed by the SHPO Officer after receiving the HPI;
3. If a property is recommended as eligible, the National Register of Historic Places Registration Form or the National Register of Historic Places Multiple Property Documentation Form must be completed by the owner;
4. The SHPO Officer shall give the owner at least 30 calendar days prior notification of the nomination's review by the HSRC;
5. The SHPO Officer shall forward the National Register Registration Form to the HSRC; and
6. The HSRC shall:

a. Review the Registration Form, documentation, and any comments concerning the property's significance and integrity,
b. Recommend to the SHPO whether the property should be listed in the Arizona Register and forwarded to the keeper of the National Register; and
c. Review a refusal of nomination upon request.

C. The Officer shall determine whether to place the nominated property on the Register in accordance with information provided in subsection (B).

D. If the SHPO refuses to forward a nomination to the HSRC, the property owner may petition the HSRC Chairman in writing to have the nomination reviewed. The petition shall be filed with the Chairman at least 60 calendar days before the next scheduled meeting.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-62 renumbered as Section R12-8-303 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-303 repealed, former Section R12-8-304 renumbered and amended as Section R12-8-303 effective August 26, 1983 (Supp. 83-4). Former Section R12-8-303 renumbered to R12-8-306; new Section R12-8-303 adopted by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-304. Factors for Determining Certification Eligibility

A. Before the SHPO Officer (Officer) certifies a Historic Property as eligible for a change in property tax classification, the property shall be listed in the National Register of Historic Places:
1. Individually; or
2. As part of a historic district. If within a historic district, the Officer shall determine whether or not the property contributes to the character of the historic district.

B. After the SHPO Officer determines a property is eligible for reclassification, the SHPO shall certify a historic property as Non-Commercial or Commercial, as defined in A.R.S. § 42-12101.

C. The following are exclusions from eligibility:
1. The Officer shall not certify a historic property that includes within its legal description a building, structure, improvement, or land area that does not contribute to the historical character and that can be excluded by modifying the legal description. If the legal description in an application includes an element or area of this nature, the applicant shall modify the legal description upon notification by the Officer in order to be eligible for certification.
2. A Historic Property that does not meet the minimum maintenance standards described in R12-8-306 shall not be certified by the Officer. In addition to other reasons established by law, the Officer may disqualify a property certified as a historic property for property tax purposes if the property owner does not comply with these rules and regulations of the Board designated in this Article.

E. Certification continues through any change of ownership, if the new owner submits required reports and affirms compliance with the program requirements in writing.

F. Historic Property shall not be decertified by the SHPO without proof, by certified mail, return receipt requested, that the current owner on record with the appropriate County Assessor's Office, has received notice in writing.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-63 renumbered as Section R12-8-304 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-304 renumbered and amended as Section R12-8-303, former Section R12-8-305 renumbered and amended as Section R12-8-304 effective August 26, 1983 (Supp. 83-4). Former Section R12-8-304 renumbered to R12-8-307; new Section R12-8-304 renumbered from R12-8-301 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-305. Verification of Eligibility for Property Tax Reclassification

A. A person that seeks to have a property reclassified for property tax purposes as either a Commercial or Non-commercial Historic Property shall submit a verification of eligibility form. The person seeking reclassification may obtain the verification of eligibility form from the SHPO or the Assessor's Office in the county where the property is located and shall submit the completed form to the Assessor's Office in the county where the property is located.

B. A person that seeks to have a property reclassified for property tax purposes as either a Commercial or Non-commercial Historic Property, shall ensure that the verification of eligibility form provides the following information:
1. Address of the property,
2. Legal description of the property,
3. Property classification,
4. Name of owner,
5. Historic property name as listed on the National Register of Historic Places,
6. Date of original construction,
7. Description of any exterior changes to the property since the property was listed on the National Register of Historic Places,
8. Photographs of the property that meet the specifications of the Board, and
9. The owner's written consent for the Officer or the Officer's representative to view the property.

C. In addition to complying with subsection (B), a person that seeks to have a property reclassified as a Commercial Historic Property shall submit with the verification of eligibility form rehabilitation construction documents including plans and specifications.

D. Following the assessor's review of the verification of eligibility form and any documents required under subsection (C), the assessor shall submit the verification of eligibility form and documents to the Officer for verification of eligibility for reclassification.

Historical Note

Adopted effective June 30, 1978 (Supp. 78-3). Former Section R12-8-64 renumbered as Section R12-8-305 without change effective November 1, 1981 (Supp. 81-5). Former Section R12-8-305 renumbered and amended as Section R12-8-304 effective August 26, 1983 (Supp. 83-4). New Section R12-8-305 renumbered from R12-8-302 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1115, effective May 5, 2007 (Supp. 07-1).

R12-8-306. Minimum Maintenance/Restoration Standards

A. The owner of a certified Commercial or Non-Commercial historic property shall maintain the property to preserve the historical integrity of the features, materials, appearance, workmanship, and environment, according to the following standards:
1. Protect the Historic Property against accelerated deterioration due to:
a. Vandalism;

b. Structural failure;
c. Climatic weathering including the affects of water infiltration;
d. Biological affects due to insects, animals, or plants;
e. Fire; or
f. Flooding.

2. Maintain the historic property by:
a. Keeping it secure;
b. Maintaining the windows and doors, or covering them in a manner that does not injure the property's integrity;
c. Maintaining security fencing, if applicable;
d. Maintaining roofs and drainage systems;
e. Minimizing damage from insects, birds, or animals; and
f. Maintaining landscaping to reduce fire potential.

B. The Officer shall decertify any certified Historic Property that is condemned by a local authority.

C. Before implementation of any rehabilitation project, the owner shall submit both a written and graphic proposal (Construction Documents) for the proposed rehabilitation project to the Officer. The Officer has 30 calendar days from receipt of the proposal in which to comment on the appropriateness of the project in relationship to The Secretary of the Interior's Standards for Rehabilitation.

D. The Officer shall review all rehabilitation projects done to ensure that the planned project for rehabilitation of the Historic Property is in accordance with the guidelines established by the U.S. Government, Cyclical Maintenance for Historic Buildings, J. Henry Chambers, AIA, 1976, available from the U.S. Government Printing Office and the U.S. Department of the Interior, the National Park Service publication titled, The Secretary of the Interior's Standards for Historic Preservation Projects, Section III, Guidelines, 1983 and The Secretary of the Interior's Standards for Rehabilitation, National Park Service, 1995 available from the National Park Service Technical Preservation Services Division, the State Historic Preservation Office, or the U.S. Government Printing Office. These three documents are incorporated by reference and on file with the Board and the Office of the Secretary of State. The materials incorporated by reference contain no future editions or amendments.

E. The owner shall submit pictures of rehabilitation projects no later than 30 calendar days after completion of the rehabilitation project that illustrate compliance with the standards established in subsection (D).

F. If a conflict occurs between the requirements of the Officer or the Officer's representative and local building officials or any applicable laws, a meeting of the appropriate representatives shall be called by the owner to discuss the question and reach an equitable solution.

Historical Note
New Section R12-8-306 renumbered from R12-8-303 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

R12-8-307. Documentation Requirements, Reports, and Inspection

A. The owner of a certified Historic Property shall submit the following information for the requested year's activity to the Officer:
1. Confirmation of current Historic Property ownership,
2. A statement signed by the owner indicating that the Historic Property is operated and maintained in accordance with the laws and rules applicable to the classification of the Historic Property for property tax purposes, and
3. Additional reports and inspections necessary for documentation requirements.

B. The owner of a classified Historic Property shall permit the Officer or representative to inspect the property for compliance with these rules. The Officer shall notify the owner by certified mail at least ten days before the inspection.

Historical Note
New Section R12-8-307 renumbered from R12-8-304 and amended by final rulemaking at 7 A.A.R. 1010, effective February 8, 2001 (Supp. 01-1).

41-511. Arizona state parks board; membership; appointment; terms

A. There shall be an Arizona state parks board, which shall consist of seven members. The state land commissioner shall be a member and the remaining members, each of whom shall be a bona fide resident of the state, shall be appointed by the governor pursuant to section 38-211. The appointive members shall be selected because of their knowledge of and interest in outdoor activities, multiple use of lands, archaeology, natural resources and the value of the historical aspects of Arizona, and because of their interest in the conservation of natural resources. Not less than one of the appointive members shall be representative of the livestock industry, one appointive member shall be professionally engaged in general recreation work and one appointive member shall be professionally engaged in the tourism industry.

B. All appointments shall be for a term of six years and shall expire on the third Monday in January of the appropriate year.

41-511.03. Purposes; objectives

The purposes and objectives of the board shall be to select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law.

41-511.04. Duties; board; partnership fund; state historic preservation officer; definition

A. The board shall:

1. Select areas of scenic beauty, natural features and historical properties now owned by the state, except properties in the care and custody of other agencies by virtue of agreement with the state or as established by law, for management, operation and further development as state parks and historical monuments.

2. Manage, develop and operate state parks, monuments or trails established or acquired pursuant to law, or previously granted to the state for park or recreation purposes, except those falling under the jurisdiction of other state agencies as established by law.

3. Investigate lands owned by the state to determine in cooperation with the agency that manages the land which tracts should be set aside and dedicated for use as state parks, monuments or trails.

4. Investigate federally owned lands to determine their desirability for use as state parks, monuments or trails and negotiate with the federal agency having jurisdiction over such lands for the transfer of title to the Arizona state parks board.

5. Investigate privately owned lands to determine their desirability as state parks, monuments or trails and negotiate with private owners for the transfer of title to the Arizona state parks board.

6. Enter into agreements with the United States, other states or local governmental units, private societies or persons for the development and protection of state parks, monuments and trails.

7. Plan, coordinate and administer a state historic preservation program, including the program established pursuant to the national historic preservation act of 1966, as amended.

8. Advise, assist and cooperate with federal and state agencies, political subdivisions of this state and other persons in identifying and preserving properties of historic or prehistoric significance.

9. Keep and administer an Arizona register of historic places composed of districts, sites, buildings, structures and objects significant in this state's history, architecture, archaeology, engineering and culture that meet criteria that the board establishes or that are listed on the national register of historic places. Entry on the register requires nomination by the state historic preservation officer and owner notification in accordance with rules that the board adopts.

10. Accept, on behalf of the state historic preservation officer, applications for classification as historic property received from the county assessor.

11. Adopt rules with regard to classification of historic property including:

(a) Minimum maintenance standards for the property.

(b) Requirements for documentation.

12. Monitor the performance of state agencies in the management of historic properties as provided in chapter 4.2 of this title.

13. Advise the governor on historic preservation matters.

14. Plan and administer a statewide parks and recreation program, including the programs established pursuant to the land and water conservation fund act of 1965 (P.L. 88-578; 78 Stat. 897).

15. Prepare, maintain and update a comprehensive plan for the development of the outdoor recreation resources of this state.

16. Initiate and carry out studies to determine the recreational needs of this state and the counties, cities and towns.

17. Coordinate recreational plans and developments of federal, state, county, city, town and private agencies.

18. Receive applications for projects to be funded through the land and water conservation fund and the state lake improvement fund on behalf of the Arizona outdoor recreation coordinating commission.

19. Provide staff support to the Arizona outdoor recreation coordinating commission.

20. Maintain a statewide off-highway vehicle recreational plan. The plan shall be updated at least once every five years and shall be used by all participating agencies to guide distribution and expenditure of monies under section 28-1176. The plan shall be open to public input and shall include the priority recommendations for allocating available monies in the off-highway vehicle recreation fund established by section 28-1176.

21. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-1302, subsection B.

B. Notwithstanding section 41-511.21, the board may annually collect and expend monies to plan and administer the land and water conservation fund program, in conjunction with other administrative tasks and recreation plans, as a surcharge to subgrantees in a proportionate amount, not to exceed ten percent, of the cost of each project. The surcharge monies shall be set aside to fund staff support for the land and water conservation fund program.

C. A partnership fund is established consisting of monies received pursuant to subsection B of this section, monies received from intergovernmental agreements pursuant to title 11, chapter 7, article 3 and monies received pursuant to section 35-148. The board shall administer the fund monies as a continuing appropriation for the purposes provided in these sections.

D. The state historic preservation officer shall:

1. In cooperation with federal and state agencies, political subdivisions of this state and other persons, direct and conduct a comprehensive statewide survey of historic properties and historic private burial sites and historic private cemeteries and maintain inventories of historic properties and historic private burial sites and historic private cemeteries.

2. Identify and nominate eligible properties to the national register of historic places and the Arizona register of historic places and otherwise administer applications for listing historic properties on the national and state registers.

3. Administer grants-in-aid for historic preservation projects within this state.

4. Advise, assist and monitor, as appropriate, federal and state agencies and political subdivisions of this state in carrying out their historic preservation responsibilities and cooperate with federal and state agencies, political subdivisions of this state and other persons to ensure that historic properties and historic private burial sites and historic private cemeteries are taken into consideration at all levels of planning and development.

5. Develop and make available information concerning professional methods and techniques for the preservation of historic properties and historic private burial sites and historic private cemeteries.

6. Make recommendations on the certification, classification and eligibility of historic properties and historic private burial sites and historic private cemeteries for property tax and investment tax incentives.

E. The state historic preservation officer may:

1. Collect and receive information for historic private burial sites and historic private cemeteries from public and private sources and maintain a record of the existence and location of such burial sites and cemeteries located on private or public lands in this state.

2. Assist and advise the owners of the properties on which the historic private burial sites and historic private cemeteries are located regarding the availability of tax exemptions applicable for such property.

3. Make the records available to assist in locating the families of persons buried in the historic private burial sites and historic private cemeteries.

F. For the purposes of this section, "historic private burial sites and historic private cemeteries" means places where burials or interments of human remains first occurred more than fifty years ago, that are not available for burials or interments by the public and that are not regulated under title 32, chapter 20, article 6.

41-511.05. Powers; compensation

The board, subject to legislative budgetary control within the limitations of this article, may:

1. Subject to chapter 4, article 4 and, as applicable, article 5 of this title, employ, determine conditions of employment and specify the duties of such administrative, secretarial and clerical workers and technical employees such as naturalists, archaeologists, landscape architects, rangers, park supervisors, caretakers, guides, skilled tradesmen, laborers, historians and engineers, and contract to have the services of such advisors or consultants as are reasonably necessary or desirable to enable it to perform adequately its duties. The compensation of the director and of all workers and employees shall be as determined pursuant to section 38-611.

2. Make such contracts, leases and agreements and incur such obligations as are reasonably necessary or desirable within the general scope of its activities and operations to enable it to perform adequately its duties.

3. Acquire through purchase, lease, agreement, donation, grant, bequest or otherwise real and personal property and acquire real property through eminent domain for state park or monument purposes. Property may not be acquired in the manner provided in this paragraph that will require an expenditure in excess of funds budgeted or received for such purposes. A state park or monument, or additions to a state park or monument, may not be created containing in excess of one hundred sixty acres of land unless created by an act of the legislature. This acreage limitation does not apply in the case of lands given or donated for state park or monument purposes or to state owned lands that are selected by the board and that are not subject to outstanding leases, permits or other rights for the use of the lands including preferential rights to renew such leases and permits.

4. Sell, lease, exchange or otherwise dispose of real and personal property. Any disposition of real property shall be submitted for approval of the joint committee on capital review. The disposition of office equipment, furnishings, vehicles and other materials is subject to chapter 23, article 8 of this title. The disposition of artifacts and other property of scientific, archaeological, historical or sociological interest is exempt from chapter 23, article 8 of this title, but the board shall consult with the Arizona historical society in disposing of property of historical interest.

5. Construct at state parks and monuments necessary sanitary and other facilities including picnic tables, fireplaces, campsites, service buildings and maintenance shops, and contract with private persons for the construction and operation of cabins, hotels and restaurants, and like establishments.

6. Erect suitable signs and markers at parks and monuments and write, prepare and publish written materials describing the historical significance of monuments and other places of historical or other significance.

7. Solicit and work in cooperation with the department of transportation and the highway departments of various counties and the United States federal highway administration for necessary roads and trails within the state parks and monuments and access roads to state parks and monuments. For the purposes of this paragraph, the board may designate roads, spurs and other traffic related appurtenances within state park boundaries as public highways. Designation of roads, spurs or other traffic related appurtenances as public highways does not prohibit the board from closing such public highways when the park is closed, charging for admission to the park to persons using the public highway within the park or otherwise managing such public highways in the same manner as other lands within the park.

8. Levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided under the jurisdiction of the board. The board may enter into agreements for the purpose of accepting payment for fees or other charges imposed pursuant to this article by alternative payment methods, including credit cards, charge cards, debit cards and electronic funds transfers. The collecting officer shall deduct any fee charged or withheld by a company providing the alternative payment method under an agreement with the board before the revenues are transferred to the board.

9. Make reasonable rules for the protection of, and maintain and keep the peace in, state parks and monuments. Such rules adopted by the parks board are subject to review and approval by the legislature. After a board rule has been finally adopted pursuant to chapter 6 of this title, the board shall immediately forward a certified copy of the rule to the legislature. The legislature may review and, by concurrent resolution, approve, disapprove or modify such rule. However, such rule shall be given full force and effect pending legislative review. If a concurrent resolution is not passed by the legislature with respect to the rule within one year following receipt of a certified copy of the rule, the rule is deemed to have been approved by the legislature. If the legislature disapproves a rule or a section of a rule, the board shall immediately discontinue the use of any procedure, action or proceeding authorized or required by the rule or section of the rule. If the legislature modifies a rule or section of a rule, the board shall immediately suspend the use of any procedure, action or proceeding authorized or required by the rule or section of the rule until the modified rule has been adopted in accordance with chapter 6 of this title, after which all proceedings pursuant to the rule shall be conducted in accordance with the modified version of the rule.

10. Furnish advisory services to city and county park or recreation boards and organizations.

11. Delegate to the director, the deputy director or the director's designee any of its powers and duties, whether ministerial or discretionary, that are prescribed by law, except that the board may not delegate its power or duty to make rules.

12. Reimburse board volunteers for travel and lodging expenses and per diem subsistence allowances incurred while on public business for the board. Reimbursement amounts shall not exceed those allowed under title 38, chapter 4, article 2.

13. In consultation with the conservation acquisition board, develop a grant program and adopt guidelines for allocating and obligating monies in the land conservation fund pursuant to section 41-511.23. The guidelines shall include consideration of both qualification issues relating to applicants for grants and issues relating to the proposed use of the grant money in a manner consistent with existing municipal, county and regional land use plans.

14. Require volunteers who collect fees or interact with children or vulnerable adults as defined in section 13-3623 within a state park to submit a full set of fingerprints to the board 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.

42-12101. Definitions

In this article, unless the context otherwise requires:

1. "Commercial historic property" means real property that:

(a) Meets the criteria for classification as class one, paragraph 12 pursuant to section 42-12001 or class four pursuant to section 42-12004, subsection A, paragraphs 2 through 9.

(b) Is listed in the national register of historic places established and maintained under the national historic preservation act (P.L. 89-665; 80 Stat. 915; 16 United States Code section 470 et seq.), as amended.

(c) Meets the minimum standards of maintenance established by rule by the Arizona state parks board.

2. "Noncommercial historic property" means real property:

(a) That is listed in the national register of historic places established and maintained under the national historic preservation act (P.L. 89-665; 80 Stat. 915; 16 United States Code section 470 et seq.), as amended.

(b) That meets the minimum standards of maintenance established by rule by the Arizona state parks board.

(c) On which no business or enterprise is conducted with the intent of earning a profit.

42-12105. Disqualification

A. Property shall remain classified and assessed as noncommercial historic property until it becomes disqualified through either:

1. Notice by the taxpayer to the assessor to remove the assessment as noncommercial historic property.

2. Sale or transfer to an ownership that makes it exempt from property taxation.

3. Notification by the state historic preservation officer to the assessor that the property no longer qualifies as noncommercial historic property.

B. Property shall remain classified and assessed as commercial historic property until it becomes disqualified through either:

1. Notice by the taxpayer to the assessor to remove the assessment as commercial historic property.

2. Sale or transfer to an ownership that makes it exempt from property taxation.

3. Notification by the state historic preservation officer to the assessor that the property no longer qualifies as commercial historic property.

4. The failure to maintain the property in a manner consistent with the minimum standards of maintenance established by rule by the Arizona state parks board.

Arizona State Parks Board (ASPB)

5 YEAR REVIEW REPORT

Title 12, Chapter 8

October 28, 2024

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-511

Specific Statutory Authority:: A.R.S. § 41-511.02-
A.R.S. § 41-51105

2. The objective of each rule:

Article 1	**General Provisions**
R12-8-101	**Definitions.** Defines terms and phrases used throughout 12 A.A.C. 8.
R12-8-102	**Permission to Enter or Remain in a State Park.** Establishes entry and use of a state park and provides authority for removing and delaying the return of a person in violation of park rules.
R12-8-103	**Vandalism.** Describes that a person shall not vandalize any state park property.
R12-8-104	**Hours of Use; Closure.** Sets the hours of use for various areas in the parks and gives the Director the authority to modify hours.

R12-8-106	**Limited Services on Christmas.** Describes Christmas hours at the state parks.

R12-8-107	**Litter & Waste.** Sets the standards for the disposal of trash, garbage, human or animal waste within a state park.
R12-8-108	**Payment of Fees:** Sets the rules for the collection of fees and charges for the state park system.
R12-8-109	**Fees & Permits.** Sets the fee structure for the use of agency resources and facilities.
R12-8-110	**Fee Waivers.** Allows the Director to waive state park fees.
R12-8-111	**Camping**. Sets the requirements for camping at a state park.
R12-8-112	**Campfires.** Sets the requirements for lighting a campfire in a state park.
R12-8-113	**Vehicles, Speed Limits, and Parking.** Sets the requirements for operating a motor vehicle within a state park.
R12-8-114	**Watercraft, Launching, and Mooring.** Sets the requirements for operating a watercraft at a state park.
R12-8-115	**Pets.** Sets the standards for pets coming into a state park by a patron.
R12-8-116	**Glass Containers.** Prohibits glass or ceramic containers in areas of a state park where they are restricted.
R12-8-119	**Weapons.** Establishes the standards for carrying, transporting, and storage of weapons in a state park.
R12-8-120	**Fireworks & Explosives.** Prohibits the use of fireworks and explosives only if a special permit is authorized by the Director.
R12-8-122	**Commercial Use of a State Park.** Establishes limits surrounding commercial activities within a state park.
R12-8-124	**Disorderly Conduct.** Establishes standards for disorderly conduct within a state park.

R12-8-125	**Special Use Permits.** Sets the requirements for authorizing special use permits within a state park.

R12-8-126	**Violation; Classification.** States that an individual who violates rules commits a misdemeanor.
Exhibit A	**Fees.** Sets the fee ranges for the state park system.

Article 2	**Board Operations**
R12-8- 201	**Meetings.** Sets the requirements for State Park Board meetings.
R12-8- 202	**Organization of the Board.** Sets requirements for the selection of officers for the State Parks Board.
R12-8- 203	**Committees.** Establishes special committees within the State Parks Board.
R12-8- 204	**Procedures at Meetings.** Establishes voting procedures for the State Park Board meetings.

Article 3	**State Historic Preservation Office Programs (SHPO)**
R12-8-301	**Definitions.** Defines terms used in the SHPO.
R12-8-302	**Criteria for Evaluation**. Establishes criteria for evaluating a project as a listed property on the Arizona Register of Historic Places.
R12-8-303	**Process of Registration.** Establishes the processes by which a property is registered as a Historic Property on the Arizona and/or National Register.
R12-8-304	**Factors for Determining Certification Eligibility.** Establishes the factors for determining eligibility for the National Register of Historic Places and certification of historic properties for tax purposes.
R12-8-305	**Verification of Eligibility for Property Tax Reclassification.** Establishes the process for reclassifying properties as Commercial or Non-Commercial Historic Properties.

R12-8-306	**Minimum Maintenance Restoration/Standards.** Establishes standards for properties to maintain eligibility as mandated in statute.

R12-8-307	**Documentation Requirements, Reports, and Inspection.** Establishes the process for an owner of a certified Historic Property to inform SHPO of the requested year's activities.

3. Are the rules effective in achieving their objectives?

Yes, the rules are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes?

Yes, the rules are consistent with other rules and statutes.

5. Are the rules enforced as written?

Yes, the rules are enforced as written.

6. **Are the rules clear, concise, and understandable?**

Yes, the rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years? Yes _ No x**

There have been no written criticisms of the rules within the last five years.

8. **Economic, small business, and consumer impact comparison:**

There are no economic, small business, or consumer impacts to the rules as written. The last economic impact comparison from 2019 indicated there were no significant impacts. There have been no changes to the rules and there are no changes that would have an economic impact on our rulemaking.

The State Parks Board reported in the previous report that the voluntary program for historic property designation and certification places no economic impact on the property owners, public or small business and that is the same currently. SHPO rules outline the administrative processes for federal and state law related to historic property designation and certification of properties for historic tax purposes. These rules do not have an economic impact, and staff has worked to ensure that they are meeting statutory directives.

9. **Has the agency received any business competitiveness analyses of the rules?**

No, ASPB has not received any business competitive analysis of the rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

ASPB proposed to review the rules with the Board to see if any rules needed to be amended on the previous report, however, since the previous report was submitted, ASPB has had a significant change in leadership and staff and an overhaul in agency processes. The agency has not updated rules, but is currently in discussions with the Governor's office to consider adjusting park fees and a possible cleanup of the rule package. The State Historic Preservation Office (SHPO) has also started discussing a clean-up of their rule package as well.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Article 1 General Provisions	These rules benefit the public by ensuring the safety and protection of the resources and providing recreational, educational, and cultural areas for the enjoyment and education of Arizona residents. If the rules were not in place, there is an increased risk of costly occurrences that would impact the future enjoyment of the visitors and the pocketbooks of all Arizonans.
Article 2 Board Operations	The Agency concurs with previous submissions that the cost of the appointed Board is minimal. This cost is outweighed by the benefits of a public body appointed by the Governor to evaluate public input and provide guidance on agency decisions as to the best means of fulfilling the Agency's mission.
Article 3 SHPO Programs	This article benefits the public by providing a transparent process for administrative processes required of the SHPO by state and federal law for the Arizona Register of Historic Places, the National Register of Historic Places, and the State Historic Property Tax Program. These programs make a contribution to the benefits of historic rehabilitation.

12. Are the rules more stringent than corresponding federal laws?

No, the rules are not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The agency does not have rules adopted after July 29, 2010 subject to A.R.S. § 41-1037.

14. Proposed course of action

The authorization for rulemaking rests with the Arizona State Parks Board and there is a process for the Legislature to approve, disapprove, or modify the rules. ASPB staff is in the process of consulting with the Governor's office on possible fee updates and rule changes. Relating to the SHPO Programs rules, SHPO is identifying terminology that needs to be cleaned up and also cleaning up various terms in 12-8-301, 12-8-302, 12-8-303, and 12-8-304 that may improve clarity for potential state or federal historic register applicants. A final rule package can be sent to the GRRC Board by April 2026 taking into account Parks Board approvals and also working with the Attorney General for the Board on the rule package. This would also still give the Parks Board time to send a certified copy of the rule package to the Legislature for their approval while they are still in session pursuant to ARS § 41-511.05.

F.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON A.R.S. § 41-1033(G) PETITION RELATED TO DEPARTMENT OF HEALTH SERVICES PRACTICES REGARDING ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES INSPECTIONS

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(G) Petition - Department of Health Services**

Background

On October 30, 2024, Council staff received a petition from Spencer Scharff of Scharff, P.C. and Mayan Tahan of The Nelson Law Group on behalf of Devereux Advanced Behavioral Health Arizona (Petitioner) regarding the Department of Health Services (Department) practice of (1) requiring all inspections of Adult Behavioral Health Therapeutic Homes (ABHTH) to be unannounced; and the practice of (2) defining being away from home at the time of an unannounced inspection as a refusal to permit the inspection. *See* Petition at 1.

The Petitioner states it serves as the Collaborating Health Care Institution to ABHTH, pursuant to Department rule R9-10-1803. The Petitioner alleges the following:

> Since February of 2023, the Department has repeatedly conducted unannounced inspections of Devereux-affiliated homes. Thirteen of these inspections occurred when there was no one home to answer the door. In a number of instances, the homes were not assigned any residents and their administrators were not even in the country at the time of the inspection. In other instances, the administrator was not home because they were, consistent with their licensure, transporting their residents to an appointment. In each instance, the Department issued a Statement of Deficiency ("SOD") alleging that by not being home the ABHTH "refuses to permit" the inspection thereby running afoul of A.R.S. § 36-427(B) and creating reasonable cause to believe that the health or safety of one or more patients or the general public is in immediate danger and a license revocation is warranted.

See Petition at 2.

The Petitioner alleges these practices "are not specifically authorized by statute, exceed the Department's statutory authority, and are unduly burdensome" pursuant to A.R.S. § 41-1033(G).

The Petitioner argues, of the applicable statutes authorizing Department inspections, none explicitly authorize unannounced inspections. *Id.* at 3. Furthermore, the Petitioner argues that an explicit reference to unannounced inspections was, in fact, removed from a prior version of A.R.S. § 36-424 by the Legislature in 1989. *Id.* Moreover, the Petitioner argues the Legislature has authorized the Department to conduct unannounced annual inspections and other inspections in connection with certain other regulated facilities, but not ABHTH. *Id.* As such, the Petitioner argues the practice of requiring inspections of ABHTH to be unannounced, are not specifically authorized by statute, exceed the Department's statutory authority, and are unduly burdensome.

The Petitioner also alleges that the Department's practice of equating not being present with refusal to permit inspection under A.R.S. § 36-427(B) also exceeds the Department statutory authority. *Id.* at 5. Specifically, A.R.S. § 36-427(B) states, "[i]f the licensee…refuses to permit the department...the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists." The Petitioner argues that inspectors were not "refused" the right to inspect as that term is defined. The Petitioner alleges, "[b]y expanding the reach of A.R.S. § 36-427(B) to include absences from the premises and utilizing that unauthorized statutory expansion to warrant licensure revocations under A.R.S. § 36-427(A)(3), the Department has exceeded its statutory authority. *Id.*

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to "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."

If the Council receives information pursuant to A.R.S. § 41-1033(G), 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 practice of unannounced inspections of ABHTH may not be specifically authorized by statute and may exceed the Department's statutory authority, especially given the legislative history provided by the Petitioner regarding A.R.S. § 36-424, which removed unannounced inspections from the section. Furthermore, A.R.S. § 36-427(B) applies only when a "licensee, the chief administrative officer or any other person in charge of the institution *refuses to permit* the department or its employees or agents the right to inspect the institution's premises as provided in section 36-424…." As indicated by the Petitioner, the statute does not define what constitutes refusal. Black's Law Dictionary defines "refusal" as "[t]he denial or rejection of something offered or demanded." The Department appears to interpret "refusal" to include absence from the facility. While inspectors may be unable to inspect the institution's premises if the licensee, chief administrative officer, or any other person in charge of the institution is away from the premises at the time of an unannounced inspection, it does not necessarily mean inspectors have been refused the right to inspect the premises, especially if there is a reasonable explanation for the absence.

Conclusion

In Council staff's view, the petition raises legitimate concerns about whether the Department's practices related to unannounced inspections of ABHTH are not specifically authorized by statute, exceed the agency's statutory authority, and are unduly burdensome. Therefore, Council staff recommends that this matter receive a hearing at a future Council meeting.

THE NELSON LAW GROUP ★ PLLC
LAW, CONSULTING, & GOVERNMENT SOLUTIONS

Scharff PC

October 30, 2024

Via Email: grrc@azdoa.gov
Arizona Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Re: *A.R.S. § 41-1033(G) Petition – Adult Behavioral Health Therapeutic Homes*

Governor's Regulatory Review Council:

Pursuant to A.R.S. § 41-1033(G), we write on behalf of Devereux Advanced Behavioral Health Arizona ("Devereux") to request a review of the following the Arizona Department of Health Services ("Department") practices and regulatory license requirements that are not specifically authorized by statute, exceed the Department's statutory authority, and are unduly burdensome: (1) the practice of requiring all inspections of Adult Behavioral Health Therapeutic Homes to be unannounced; and (2) the practice of defining being away from home at the time of an unannounced inspection as a refusal to permit the inspection.

Devereux is one of the nation's largest nonprofit organizations providing services, insight, and leadership in the field of behavioral health. Devereux has provided care in Arizona for 57 years and they serve more than 4,000 people with emotional, behavioral, and cogitative differences in our state each year. Devereux holds both Joint Commission Accreditation and Praesidium Accreditation and they pride themselves on maintaining compliance with the regulations that govern the operation of its programs. Devereux's services follow evidence-based practice treatment model, which integrates the latest scientific and medical advancements with time-tested philosophies and compassionate family engagement to provide practical, effective, and efficient care, making a meaningful difference in the lives of those they serve, and the world around them.

24 WEST CAMELBACK ★ SUITE A, #541 ★ PHOENIX, AZ 85013 ★ OFFICE (602) 853-5469
MAYAN@NELSONLAWSOLUTIONS.COM ★ DIRECT: (602) 492-3866
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Devereux serves as the Collaborating Health Care Institution, pursuant to A.C.C. R9-10-1803, to Adult Behavioral Health Therapeutic Homes ("ABHTH"). By definition, a ABHTH is a residential home in which the provider lives with up to three residents. Unlike nearly all other health care institutions, ABHTHs are not paid for the services they provide to their residents. Rather, they are *reimbursed* on a per diem basis for the costs incurred in connection with their residents—such as food, clothing, transportation, housing, utilities, entertainment. In fact, Devereux requires the homes it works with to be financially self-sufficient. In other words, ABHTHs need a source income outside of the ABHTH reimbursements.

The Department has a practice of requiring all inspections to be unannounced. *See* **Exhibit A** (4-7-23 Email from the Department to Devereux ("We do not schedule compliance inspections.")). Since February of 2023, the Department has repeatedly conducted unannounced inspections of Devereux-affiliated homes. Thirteen of these inspections occurred when there was no one home to answer the door. In a number of instances, the homes were not assigned any residents and their administrators were not even in the country at the time of the inspection. In other instances, the administrator was not home because they were, consistent with their licensure, transporting their residents to an appointment. In each instance, the Department issued a Statement of Deficiency ("SOD") alleging that by not being home the ABHTH "refuses to permit" the inspection thereby running afoul of A.R.S. § 36-427(B) and creating reasonable cause to believe that the health or safety of one or more patients or the general public is in immediate danger and a license revocation is warranted.

As detailed below, the Council should declare the agency practices unlawful and void.

1. The applicable statutes do not authorize unannounced inspections of ABHTHs and imposing this requirement is unduly burdensome.

The statutes that authorize inspections of ABHTHs are A.R.S. § 36-424(A) (a substantial compliance inspection), A.R.S. § 36-424(C) (a complaint inspection), A.R.S. § 36-425(A) (an initial inspection), and A.R.S. § 36-425(D) (an annual inspection). None of these statutes authorize *unannounced* inspections. Despite the lack of statutory authority, the Department has determined that while initial inspections under A.R.S. § 36-425(A) are announced, the other three types of inspections, which they refer to as compliance inspections, are unannounced. *See* **Exhibit A** (4-7-23 Email from the Department to Devereux ("We do not schedule compliance inspections.")).

A prior version of A.R.S. § 36-424 authorized certain unannounced inspections, but the Legislature repealed the authorizing provision in 1989. *See* Arizona Senate Bill 1355, 39th Leg., 1st Reg. Sess. (1989) (SB 1355).[1] The Legislature has authorized the Department to conduct unannounced annual inspections and other inspections in connection with certain other regulated facilities. *See, e.g.*, A.R.S. § 36-885(B) ("The department shall make at least one unannounced visit annually" to a child care facility); A.R.S. § 36-2806(H) ("The department shall make at least one unannounced visit annually to each nonprofit medical marijuana dispensary"); A.R.S. § 36-897.05(B) ("At least one unannounced visit shall be made annually" to a child care group home); A.R.S. § 36-463.02(A) ("Inspections may be unannounced and shall take place during regular working hours" of a clinical laboratory). Therefore, the Legislature knows how to authorize unannounced inspections but has chosen not to authorize such inspections under A.R.S. § 36-424 and A.R.S. § 36-425. *See CPEN v. Riffel*, 213 Ariz. 247, 249–50 (App. 2006) (holding that "when the legislature uses different language within a statutory scheme, it does so with the intent of

[1] Specifically, SB 1355 deleted Section E, which provided certain "unannounced inspections of nursing care institutions and residential care institutions . . . ."

ascribing different meanings and consequences to that language."). By requiring some of these inspections to be unannounced, the Department has exceeded its statutory authority.

ABHTHs provide a home environment for their residents. This includes taking residents to appointments, activities, and errands. During these times, meeting their obligations to residents necessitates the providers being away from home. In other circumstances, residents are in their licensed day programs and the providers are at work. Occasionally, there are no residents assigned to a home and the providers are away on vacation. The Department's policy of requiring unannounced inspections prevents ABHTHs from meeting the needs of their residents and themselves, and is simply not workable for this provider type. Therefore, by refusing to announce their inspections of these homes in contravention of the applicable statutes, the Department is creating an insurmountable burden on ABHTHs resulting in a loss of their licenses and therefore a loss of their residents' homes.

2. The Department's reliance upon A.R.S. § 36-427(B) to issue SODs is unlawful.

The "violations" alleged in the SODs are based entirely on A.R.S. § 36-427(B), which states that "[i]f the licensee… refuses to permit the department … the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists." Importantly, A.R.S. § 36-427 does not define a refusal to include being away from the premises nor does the statute authorize the Department to implement a rule or policy expanding the applicability of the statute to include such a circumstance. A.R.S. § 36-427(B) is clear and concise—it applies only to situations when a licensee makes an affirmative refusal to permit an inspection. *See Refusal*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The denial or rejection of something offered or demanded.").

By expanding the reach of A.R.S. § 36-427(B) to include absences from the premises and utilizing that unauthorized statutory expansion to warrant licensure revocations under A.R.S. § 36-427(A)(3), the Department has exceeded its statutory authority.

/s/ Spencer G. Scharff
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EXHIBIT A

From: Tiffany Slater <tiffany.slater@azdhs.gov>
Sent: Friday, April 7, 2023 12:49 PM
To: Sunshine Turner <sturner4@devereux.org>
Cc: Yvette Jackson <YJACKSON@devereux.org>; Paul Davis <PDAVIS@devereux.org>
Subject: Re: Request to Meet

Good Afternoon,

Thank you for your email. The Department of Health Services does not license Adult Therapeutic Foster Care. We license and regulate Adult Behavioral Health Therapeutic Homes which is a health care institution outlined in Arizona Administrative Code, Title 9, Chapter 10, Article 1, (A.A.C. R9-10-102.A.23).

Arizona Revised Statutes 36-424, indicates that a health care institution must provide permission for and complete acquiescence in any entry or inspection of the premises, during the term of the license (A.R.S. 36-424.C)

Further, Arizona Revised Statutes 36-427 indicates that if the health care institution refuses to permit the Department or its employees the right to inspect, such action shall be deemed reasonable cause to believe that a substantial violation exists and allows the Department to revoke the license (A.R.S. 36-427.B)

It is the expectation that all licensed health care institutions permit the Department to inspect. If a provider is not available, the back-up provider must be available for the inspection. We do not schedule compliance inspections.

Please be advised that refusing to sign an enforcement agreement could result in a legal order being issued, up to and including a notice of intent to revoke. At that time, you would have appeal rights and the ability to request a hearing.

If you still want to meet on this matter, I have the following availability:

Monday, April 17, 2023 at 3 pm
Friday, April 21, 2023 at 11 am

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators and assisted living facility managers

A. Except as provided in subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.

B. The director may accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the health care institution's accreditation report for the licensure period and the health care institution is accredited by an independent, nonprofit accrediting organization approved by the secretary of the United States department of health and human services. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution. For the purposes of this subsection, each licensed premises of a health care institution must have its own accreditation report. The director may not accept an accreditation report in lieu of a compliance inspection of:

1. An intermediate care facility for individuals with intellectual disabilities.

2. A nursing-supported group home.

3. A health care institution if the health care institution has been subject to an enforcement action pursuant to section 36-427 or 36-431.01 within the year preceding the annual licensing fee anniversary date.

C. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

D. The director shall immediately report to the board of examiners of nursing care institution administrators and assisted living facility managers information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

1989 Ariz. SB 1355

Enacted, June 21, 1989

Reporter
1989 Ariz. ALS 255; 1989 Ariz. Ch. 255; 1989 Ariz. SB 1355

ARIZONA ADVANCE LEGISLATIVE SERVICE > THIRTY-NINTH LEGISLATURE FIRST REGULAR SESSION, 1989 > CHAPTER 255 > SENATE BILL 1355

Notice

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**
[D> TEXT WITHIN THESE SYMBOLS IS DELETED **<D]**

Synopsis

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; PRESCRIBING DEFINITIONS; PRESCRIBING POWERS AND DUTIES OF THE DIRECTOR; PRESCRIBING CERTAIN FEES; PRESCRIBING APPLICATION FOR LICENSURE AS A HEALTH CARE INSTITUTION; PROVIDING FOR BACKGROUND INVESTIGATIONS AND PROCEDURES OF A HEALTH CARE INSTITUTION APPLICANT; PROVIDING GROUNDS FOR DENIAL OF LICENSE; PROVIDING FOR ORDER TO TRANSFER PATIENTS OR REDUCE CAPACITY OF CERTAIN FACILITIES; PRESCRIBING DISCIPLINARY ACTIONS AGAINST A LICENSEE AND RIGHT TO A HEARING; PRESCRIBING THE DEFINITION AND CLASSIFICATION OF A CRIMINAL OFFENSE; PRESCRIBING COUNTERSIGNATURE BY PHYSICIANS OF TELEPHONE ORDERS FOR MEDICATION AT NURSING CARE INSTITUTIONS; PRESCRIBING EXCEPTION TO FINDING A DEFICIENCY BY THE DIRECTOR; PRESCRIBING A RECORD; PROVIDING FOR REPEAL OF EXCEPTIONS TO CONSTRUCTION AND LICENSURE PROVISIONS; PROVIDING FOR REPEAL OF PROVISIONS FOR TECHNICAL ASSISTANCE; MAKING TECHNICAL AND CONFORMING CHANGES; AMENDING *SECTIONS 36-401*, *36-405*, 36-421.02, *36-422*, *36-424*, *36-425*, *36-427*, *36-428*, *36-431*, *36-435*, *36-436*, AND 36-447.05, ARIZONA REVISED STATUTES, AND REPEALING SECTIONS 36-421.01 AND 36-447.18, ARIZONA REVISED STATUTES.

Text

Be it enacted by the Legislature of the State of Arizona:

Section 1. *Section 36-401, Arizona Revised Statutes*, is amended to read:

36-401. Definitions

[D> A. **<D]** In this chapter, unless the context otherwise requires:

1. "Accredited hospital" means a hospital currently accredited by a nationally recognized commission on hospital accreditation.

2. "Adaptive services" means medical services provided on an outpatient basis.

3. "Adult day health care facility" means a facility providing adult day health services during a portion of a continuous twenty-four hour period for compensation on a regular basis for five or more adults not related to the proprietor.

4. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four hour period. Adult day health services may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

5. "Adult foster care" means a residential setting which provides room and board, personal care, transportation, respite, habilitation and supervision for one to four adults in a family environment who are eligible for participation in the Arizona long-term care system pursuant to chapter 29, article 2 of this title.

6. "Ambulatory person" means any individual, including one who uses a cane or other ambulatory support device, who is physically and mentally capable under emergency conditions of finding a way to safety without assistance.

[D> 7. "Authorized local agency" means either: **<D]**

[D> (a) A local health planning agency which is a public regional planning body with a governing board composed of a majority of elected officials of units of general local government who represents consumers of health care, which appoints a governing care body recognized by the department of health services. **<D]**

[D> (b) A nonprofit private corporation or single unit of general local government if such agency has been established in a geographic region determined to reflect unusual or highly unusual circumstances as provided in section 1511 of the federal public health service act. **<D]**

[D> 8. **<D]** 7. "Capital expenditure" means the acquisition by lease or purchase of a capital asset in the nature of buildings, fixtures or durable equipment.

[D> 9. **<D]** 8. "Construction" means the building, erection, fabrication, or installation of a health care institution or facilities therefor.

[D> 10. **<D]** 9. "Continuous" means available at all times without cessation, break or interruption.

[D> 11. **<D]** 10. "Department" means the department of health services.

[D> 12. **<D]** 11. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

[D> 13. **<D]** 12. "Director" means the director of the department of health services.

[D> 14. "Emergency need" means a condition which presents an immediate threat to the public health, safety or welfare of the patients who would be served and makes it impracticable, unnecessary or contrary to the public interest to conduct the regular certificate of need application review process. **<D]**

[D> 15. **<D]** 13. "Facilities" means buildings or capital equipment used by a health care institution for providing any of the types of services as defined in this chapter.

[D> 16. **<D]** 14. "Governing authority" means the individual, agency, group or corporation, appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the health care institution is vested.

[D> 17. **<D]** 15. "Habilitation" means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, orientation and mobility.

[D> 18. **<D]** 16. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health screening services, other health-related services or supervisory care services and includes home health agencies as defined in *section 36-151* and hospice service agencies.

[D> 19. **<D]** 17. "Health-related services" means services, other than medical, pertaining to general supervision, protective, preventive and personal care services or supervisory care services.

[D> 20. **<D]** 18. "Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.

[D> 21. **<D]** 19. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.

[D> 22. **<D]** 20. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

[D> 23. **<D]** 21. "Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, which is engaged in providing hospice services at the place of residence of its clients.

[D> 24. **<D]** 22. "Inpatient beds" or "resident beds" means accommodations with supporting services, such as food, laundry and housekeeping, for patients or residents who generally stay in excess of twenty-four hours.

[D> 25. **<D]** 23. "Medical services" means the services pertaining to medical care that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

[D> 26. **<D]** 24. "Modification" means the substantial improvement, enlargement, reduction, moving or alteration of, addition to, or other change in a health care institution or its facilities or in the services provided by such an institution.

[D> 27. **<D]** 25. "Nonproprietary institution" means any health care institution organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or operated by the state or any political subdivision of the state.

[D> 28. **<D]** 26. "Nursing care institution" means a health care institution providing inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician.

[D> 29. **<D]** 27. "Nursing services" means those services pertaining to the curative, restorative and preventive aspects of nursing care that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

[D> 30. **<D]** 28. "Organized medical staff" means a formal organization of physicians, and dentists where appropriate, with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued betterment of that care.

[D> 31. **<D]** 29. "Outpatient surgical center" means a type of health care institution with facilities and limited hospital services for the diagnosis or treatment of patients by surgery whose recovery, in the concurring opinions of the surgeon and the anesthesiologist, does not require inpatient care.

[D> 32. **<D]** 30. "Personal care services" means assistance with eating, bathing and dressing for individuals who are in need of a protective environment.

[D> 33. **<D]** 31. "Physician" means any person licensed under the provisions of title 32, chapter 13 or 17.

[D> 34. **<D]** 32. "Residential care institution" means a health care institution other than a hospital or a nursing care institution which provides resident beds and health-related services for persons who do not need inpatient nursing care.

[D> 35. **<D]** 33. "Respite care services" means services provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

[D> 36. "State plan" means the plan for construction and modernization of health care institutions formulated by the department as a part of the state comprehensive health plan. **<D]**

[D> 37. **<D]** 34. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

[D> 38. **<D]** 35. "Supervisory care home" means a residential care institution which **[D>** provides only supervisory care services to more than **<D] [A>** HAS **<A]** five **[A>** OR MORE **<A]** ambulatory persons **[A>** WHO REQUIRE SUPERVISORY CARE SERVICES AND WHO ARE **<A]** unrelated to the administrator or owner of such home.

[D> 39. **<D]** 36. "Supervisory care services" means accommodation, board and general supervision, including assistance to persons in the self-administration of prescribed medications.

[D> B. Where there is no authorized local agency as defined in subsection A the state health planning advisory council shall serve as the authorized local agency. **<D]**

Sec. 2. *Section 36-405, Arizona Revised Statutes*, is amended to read:

36-405. Powers and duties of the director

A. The director shall adopt**[D>** , repeal and amend reasonable **<D]** rules **[D>** and regulations **<D]** which shall establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure 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 record keeping pertaining to the administration of medical, nursing and personal care services, in accordance with generally accepted practices of health care. 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, as guidelines in prescribing minimum standards and requirements under this section.

[D> B. The director shall, by regulation, establish a health care institution classification for nursing care institutions, with subclassifications including, but not limited to, skilled nursing facilities, intermediate care facilities and personal care facilities. Such regulations shall provide for the number, type and scope of nursing services, other supportive services and standards of patient care required for each subclass of institution. **<D]**

[D> C. **<D]** B. The director may, by **[D>** regulation **<D] [A>** RULE, **<A]** classify and subclassify **[D>** other **<D]** 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 but not be limited to hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in **[D>** regulations **<D] [A>** RULES **<A]** and standards to be appropriate among different classes or subclasses of health care institutions the director may make such distinctions.

C. **[A>** THE DIRECTOR SHALL ESTABLISH AND COLLECT THE FOLLOWING FEES FOR HEALTH CARE INSTITUTIONS: **<A]**

1. **[A>** NONREFUNDABLE FEES NOT TO EXCEED THE FOLLOWING AMOUNTS: **<A]**

(a) **[A>** FOR A PERMIT, TWENTY-FIVE DOLLARS. **<A]**

(b) **[A>** FOR AN APPLICATION, FIFTY DOLLARS. **<A]**

2. **[A>** ARCHITECTURAL DRAWING REVIEW FEES NOT TO EXCEED THE FOLLOWING AMOUNTS: **<A]**

(a) **[A>** FOR A PROJECT WITH A COST UNDER ONE HUNDRED THOUSAND DOLLARS, FIFTY DOLLARS. **<A]**

(b) **[A>** FOR A PROJECT WITH A COST OF MORE THAN ONE HUNDRED THOUSAND DOLLARS AND LESS THAN FIVE HUNDRED THOUSAND DOLLARS, ONE HUNDRED DOLLARS. **<A]**

(c) **[A>** FOR A PROJECT WITH A COST OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, ONE HUNDRED FIFTY DOLLARS. **<A]**

3. **[A>** LICENSE FEES, WHICH MUST BE PAID ANNUALLY, NOT TO EXCEED THE FOLLOWING AMOUNTS: **<A]**

(a) **[A>** FOR A FACILITY WITH NO BEDS, ONE HUNDRED DOLLARS. **<A]**

(b) **[A>** FOR A FACILITY WITH ONE TO FIFTY-NINE BEDS, ONE HUNDRED DOLLARS, PLUS AN ADDITIONAL TEN DOLLARS PER BED. **<A]**

(c) **[A>** FOR A FACILITY WITH SIXTY TO NINETY-NINE BEDS, TWO HUNDRED DOLLARS, PLUS AN ADDITIONAL TEN DOLLARS PER BED. **<A]**

(d) **[A>** FOR A FACILITY WITH ONE HUNDRED TO ONE HUNDRED FORTY-NINE BEDS, THREE HUNDRED DOLLARS, PLUS AN ADDITIONAL TEN DOLLARS PER BED. **<A]**

(e) **[A>** FOR A FACILITY WITH ONE HUNDRED FIFTY BEDS OR MORE, FIVE HUNDRED DOLLARS, PLUS AN ADDITIONAL TEN DOLLARS PER BED. **<A]**

Sec. 3. Repeal

Sections 36-421.01 and 36-447.18, Arizona Revised Statutes, are repealed.

Sec. 4. Section 36-421.02, Arizona Revised Statutes, is amended to read:

36-421.02. Outpatient behavioral health service agencies; licensure; exception

A. If an outpatient behavioral health service agency is licensed pursuant to this chapter, the department shall not license such agency's outpatient behavioral health service facilities as defined by *section 36-401***[D>** , subsection A **<D]**.

B. This section does not apply to residential or day treatment facilities provided for in *section 36-550.05*.

Sec. 5. *Section 36-422, Arizona Revised Statutes*, is amended to read:

36-422. Application for license

A. Any person who desires to obtain a license under this chapter for operation of a health care institution shall file with the department an application on a form prescribed, prepared and furnished by the department. The application shall contain the following:

1. The name and location of the health care institution.

2. Whether it is to be operated as a proprietary or nonproprietary institution.

3. The name of the governing authority, and, if other than an individual, the names of the persons having its control. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed.

4. The class or subclass of health care institution to be established or operated.

5. The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

6. The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

7. **[D>** Such **<D]** Other pertinent information as may be required by the department for the proper administration of this chapter and department **[D>** regulations **<D] [A>** RULES. **<A]**

8. For any health care institution newly constructed, or modified since it was last licensed, a copy of the appropriate permit issued pursuant to *section 36-421*.

B. The application shall be signed, in the case of an individual by the owner of the health care institution, or in the case of a partnership or a corporation, by two of the officers thereof, or in the case of a governmental unit, by the head of the governmental department having jurisdiction thereof.

C. Application for licensure or relicensure shall be filed at least **[D>** thirty **<D] [A>** SIXTY **<A]** but not more than **[D>** sixty **<D] [A>** ONE HUNDRED TWENTY **<A]** days prior to anticipated operation or the expiration date of the then current license. Where the operation of any licensed health care institution is intended to be terminated, or where a change of ownership will occur, either during or at the expiration of the term of its license, the department shall be notified at least thirty days in advance.

D. **[A>** IN ADDITION TO THE REQUIREMENTS OF THIS CHAPTER, THE DEPARTMENT MAY PRESCRIBE BY RULE OTHER LICENSURE REQUIREMENTS AND MAY PRESCRIBE PROCEDURES FOR CONDUCTING INVESTIGATIONS INTO AN APPLICANT'S CHARACTER AND QUALIFICATIONS. **<A]**

Sec. 6. *Section 36-424, Arizona Revised Statutes*, is amended to read:

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators

A. Every applicant for licensure as a health care institution shall submit to the director a properly completed application for a license accompanied by the necessary fee.

B. Subject to the limitation prescribed by subsection C of this section, the department shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant is in compliance with the requirements of this chapter and the rules established pursuant to this chapter. **[A>** THE DEPARTMENT MAY PRESCRIBE RULES REGARDING DEPARTMENT BACKGROUND INVESTIGATIONS INTO AN APPLICANT'S CHARACTER AND QUALIFICATIONS. **<A]**

C. The director shall accept proof that a health care institution is an accredited hospital in lieu of all licensing inspections required by this chapter if the department receives a copy of the institution's accreditation report.

D. Upon a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director and any duly designated employee or agent thereof, including county health representatives and county or municipal fire inspectors, shall, consistent with standard medical practices, have the right to enter upon and into the premises of any health care

institution which is licensed, or required to be licensed, pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with the provisions of this chapter, the rules of the department adopted pursuant thereto, and local fire ordinances or rules. Any application for licensure under this chapter shall constitute permission for and complete acquiescence in any such entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may in accordance with *section 36-427* suspend or revoke the license of the institution or condition licensure upon corrective action by the health care institution to meet the licensing requirements. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section, is subject to inspection upon application for relicensure or reinstatement of license.

[D> E. The department shall contract with authorized local agencies applying for such contracts to permit the authorized local agencies or their advisory committees to conduct unannounced inspections of nursing care institutions and residential care institutions which are located in the planning areas of the authorized local agencies. The inspections shall be conducted, in addition to the inspections performed by the department pursuant to this chapter, to evaluate the quality of care provided at nursing care institutions and residential care institutions. An authorized local agency may use its own employees or may use volunteers to conduct the inspections. Upon completion of an inspection the authorized local agency shall notify the department of its findings and may report its findings at a public hearing conducted by the agency in accordance with title 41, chapter 6. **<D]**

[D> F. **<D]** E. The directors shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action as defined pursuant to *section 36-446.07*.

Sec. 7. *Section 36-425, Arizona Revised Statutes*, is amended to read:

36-425. Issuance of license; provisional license; denial of license

A. Upon receipt of a properly completed application and upon finding that the applicant and the health care institution for which the license is sought meet all the requirements of this chapter and the regulations of the department for licensure within one of the classes or subclasses of health care institutions, the director shall issue to the applicant a license. Otherwise he shall deny it.

B. The license shall show the name of the chief administrative officer of that specific health care institution and, except for home health agencies as defined by *section 36-151* and nursing care institutions, is valid for one year from the date of issuance. The license shall be conspicuously posted in the reception area of the licensed health care institution.

C. When an inspection or investigation of an applicant or a health care institution reveals a deficiency or deficiencies of a minor nature or of a hazardous but readily correctable nature, and the director has cause to believe that the immediate interests of the patients and of the general public would be served best by affording the institution the opportunity to correct such deficiency or deficiencies, the department shall issue a provisional license for a period of time not to exceed one year, if the applicant agrees to carry out a plan acceptable to the department to eliminate the deficiency or deficiencies within the term of the provisional license. A health care institution shall be relicensed after the expiration of its provisional license only if the licensee has fully corrected all conditions constituting failure to comply with requirements for licensure.

D. A health care institution shall have its license amended immediately at any time there is written notification of a change of the chief administrative officer specified in *section 36-422*, subsection A, paragraph 6.

E. When the department issues an original regular license or an original provisional license to a health care institution it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution.

F. **[A>** THE DIRECTOR MAY PRESCRIBE BY RULE GROUNDS ON WHICH THE DEPARTMENT MAY DENY A LICENSE. THESE GROUNDS MAY INCLUDE A FINDING THAT THE APPLICANT AND ANYONE IN A BUSINESS RELATIONSHIP WITH THE APPLICANT, INCLUDING STOCKHOLDERS, HAS HAD A LICENSE TO OPERATE A HEALTH CARE INSTITUTION REVOKED OR SUSPENDED OR HAS A LICENSING HISTORY INDICATING RECENT SERIOUS VIOLATIONS WHICH WERE A THREAT TO THE HEALTH AND SAFETY OF THE PERSONS UTILIZING THE HEALTH CARE INSTITUTION. **<A]**

Sec. 8. *Section 36-427, Arizona Revised Statutes*, is amended to read:

36-427. Suspension or revocation

A. The director may, pursuant to title 41, chapter 6, suspend or revoke the license of any health care institution if its owners, officers, agents or employees:

1. Violate any provision of this chapter or the rules of the department adopted pursuant to this chapter.

2. Knowingly aid, permit or abet the commission of any crime involving medical and health related services.

3. Have been, are or may continue to be in substantial violation of the requirements for licensure of the institution, as a result of which the health or safety of one or more patients or the general public is in immediate danger. If the licensee, the chief administrative officer or any other person in charge of the institution refuses to permit the department, its employees or agents the right to inspect its premises as provided in *section 36-424*, such action shall be deemed reasonable cause to believe that a substantial violation exists.

B. The director may, if he reasonably believes that a violation of subsection A, paragraph 3 of this section has occurred and that life or safety of patients will be immediately affected, upon written notice to the licensee, order the immediate restriction of admissions, **[A>** SELECTED TRANSFER OF PATIENTS OUT OF THE FACILITY, REDUCTION OF CAPACITY **<A]** and termination of specific services, procedures, practices or facilities.

Sec. 9. *Section 36-428, Arizona Revised Statutes*, is amended to read:

36-428. Hearings by the director

A. No license shall be suspended or revoked without affording the licensee notice and opportunity for a hearing as provided for in title 41, chapter 6.

B. Any person whose application for a permit or license has been denied by the director or who has been ordered by the director to restrict admissions, **[A>** TRANSFER SELECTED PATIENTS OUT OF THE FACILITY, REDUCE CAPACITY **<A]** and terminate specific services, procedures, practices or facilities may, at any time within thirty days after notice of **[D>** such **<D] [A>** THE **<A]** denial or order, request in writing a hearing before the director, to be held within thirty days following **[D>** such **<D] [A>** THE **<A]** written request**[D>** , **<D]** for the purpose of reviewing the action of the director.

C. All hearings shall be in accordance with title 41, chapter 6.

Sec. 10. *Section 36-431, Arizona Revised Statutes*, is amended to read:

36-431. Violation; classification

A. A person is guilty of a **[D>** petty offense **<D] [A>** CLASS 3 MISDEMEANOR **<A]** who:

1. Establishes, operates or maintains any class or subclass of health care institution, as defined in this chapter, unless the person holds a current and valid license for such class or subclass from the department.

2. Knowingly violates any provision of this chapter unless another classification is specifically prescribed in this chapter.

B. Each day that a violation continues shall constitute a separate violation.

Sec. 11. *Section 36-435, Arizona Revised Statutes*, is amended to read:

36-435. Staff privileges for podiatrists

A. The governing board of each health care institution classified by the director as a hospital pursuant to *section 36-405*, subsection **[D>** C **<D]** B shall provide for the use of the health care institution by, and staff privileges for, duly licensed podiatrists subject to nondiscriminatory rules and regulations governing the use or privileges established by the governing board and medical staff for persons licensed under title 32, **[D>** chapters **<D] [A>** CHAPTER 7, 13 **<A] [D>** and **<D] [A>** OR 17. **<A]**

B. This article does not prohibit any health care institution which is a teaching facility owned or operated by a university operating a school of medicine from requiring that any podiatrist have a faculty teaching appointment as a condition for eligibility for staff privileges at the health care institution.

Sec. 12. *Section 36-436, Arizona Revised Statutes*, is amended to read:

36-436. Filing and review of rates, rules and regulations as prerequisite to operation; findings

A. A new hospital or nursing care institution shall not engage in business within this state until its schedule on rates and charges and rules **[D>** and regulations **<D]** pertaining thereto are filed with and reviewed by the director. The schedules of rates and charges shall be in the form and contain such information as prescribed by the director.

B. The director shall adopt or establish reasonable guidelines for review of rates and charges for hospital or nursing care institutions. Those health care institutions which are classified by the director as hospitals pursuant to *section 36-405*, subsection **[D>** C **<D]** B shall use the current edition of the statement on the financial requirements of health care institutions and services, as adopted by the American hospital association, or amended editions thereof if applicable, as a guide for establishing hospital rates and charges. The director shall use, but not be limited to, the statement on the financial requirements of health care institutions and services, as adopted by the American hospital association, as a guide for review of hospital rates and charges.

C. Promptly after the filing of such schedule, the director shall review such schedule and make public his findings. Such findings shall include information on:

1. How the rates and charges relate to the operating income and expenses of the institution.

2. The source and application of funds available to the institution.

Sec. 13. Section 36-447.05, Arizona Revised Statutes, is amended to read:

36-447.05. Delivery of basic medical services at nursing care institutions; restrictions

A. Basic health services shall be provided at a nursing care institution only under the general direction of an attending physician. The administrator shall establish procedures which shall be posted in a place readily accessible to all charge nurses for obtaining medical care when the attending physician is not available and shall arrange for such emergency medical services.

B. The administrator shall require a complete medical history prior to admission and shall also require, within thirty days before or after admission and annually thereafter, a physical examination of each person admitted to a nursing care institution.

C. A person who demonstrates clinical evidence or X-ray evidence of current pulmonary tuberculosis disease shall not be admitted to a nursing care institution.

D. All medications, medical treatment and telephone orders by the physician for laboratory tests and X-rays prescribed by a physician for a patient admitted to a nursing care institution shall be administered by licensed staff only on orders of a physician. Telephone orders from a physician for the administration of medication by licensed medical staff shall be countersigned by the physician and mailed within ten days of the telephone order. **[A>** TELEPHONE ORDERS FOR MEDICATIONS USED AS CHEMICAL RESTRAINTS, INCLUDING ALL CONTROLLED MEDICATIONS USED AS CHEMICAL RESTRAINTS, SHALL BE COUNTERSIGNED BY THE PHYSICIAN WITHIN SEVENTY-TWO HOURS OF THE TELEPHONE ORDER. THE NURSING CARE INSTITUTION SHALL NOT BE CHARGED WITH DEFICIENCIES BY THE DIRECTOR PURSUANT TO *SECTION 36-425*, SUBSECTION C, IF TELEPHONE ORDERS FOR MEDICATION OR THE ADMINISTRATION OF MEDICATION ARE MAILED TO THE PHYSICIAN FOR COUNTERSIGNATURE BY THE NURSING CARE INSTITUTION WITHIN SEVENTY-TWO HOURS OF THE TELEPHONE ORDER. THE NURSING CARE INSTITUTION SHALL MAINTAIN A RECORD OF THE TELEPHONE ORDERS MAILED TO PHYSICIANS FOR COUNTERSIGNATURE. THE RECORD SHALL BE AVAILABLE TO THE DIRECTOR FOR INSPECTION. **<A]**

E. Each nursing care institution shall report changes in the medical condition of a patient to the patient's attending physician.

F. Each nursing care institution:

1. Is subject to periodic inspection by department personnel.

2. Shall make available all information and records required to be maintained by the nursing care institution and shall provide necessary assistance and cooperation to department personnel in the inspection of the nursing care institution as required by this chapter.

History

Approved by the Governor June 21, 1989

Filed in the Office of the Secretary of State June 21, 1989

ARIZONA ADVANCE LEGISLATIVE SERVICE

36-427. Suspension or revocation; intermediate sanctions

A. The director, pursuant to title 41, chapter 6, article 10, may suspend or revoke, in whole or in part, the license of any health care institution if its owners, officers, agents or employees:

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

2. Knowingly aid, permit or abet the commission of any crime involving medical and health-related services.

3. Have been, are or may continue to be in substantial violation of the requirements for licensure of the institution, as a result of which the health or safety of one or more patients or the general public is in immediate danger.

4. Fail to comply with section 36-2901.08.

5. Violate section 36-2302.

B. If the licensee, the chief administrative officer or any other person in charge of the institution refuses to permit the department or its employees or agents the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists.

C. If the director reasonably believes that a violation of subsection A, paragraph 3 of this section has occurred and that life or safety of patients will be immediately affected, the director, on written notice to the licensee, may order the immediate restriction of admissions or readmissions, selected transfer of patients out of the facility, reduction of capacity and termination of specific services, procedures, practices or facilities.

D. The director may rescind, in whole or in part, sanctions imposed pursuant to this section on correction of the violation or violations for which the sanctions were imposed.

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.

G.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON APPEAL/PETITION OF CORPORATION COMMISSION SUBSTANTIVE POLICY STATEMENT 3 OF DECISION 79140 PURSUANT TO A.R.S. § 41-1033(E) & (G)

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: March 4, 2025

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

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **A.R.S. 41-1033(G) Petition Related to Arizona Corporation Commision Agency Practice and Substantive Policy Statement**

Summary

On November 8, 2024, Council staff received a petition ("Petition") from Underground Arizona Director Daniel Dempsey ("Petitioner") challenging the Arizona Corporation Commission ("Commission") substantive policy statement 3 of Decision 79140. The Petitioner is asking the Council to consider their petition under both A.R.S. § 41-1033(E) and A.R.S. § 41-1033(G).

For A.R.S. § 41-1033(E) the petitioner is alleging that a Commission Policy Statement concerning underground transmission lines is actually a rule.

For A.R.S. § 41-1033(G), the petitioner is alleging that the same Commission Policy Statement 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. The related actions may constitute an agency practice that is not authorized by statute.

While the Council does not have authority to review Commission rulemaking per A.R.S. § 41-1057, which states that the corporation commission is exempt from Title 41, Chapter 6, Article 5. Article 5 only deals with rulemakings and agency reports, not with the Council's authority to hear a petition under A.R.S. §41-1033. This is further supported by the Commission advising the Petitioner of the ability to appeal to the Council.

Background

On February 20, 2023 Tucson Electric Power and other utilities requested that the Commision issue a police statement concerning transmission lines because the Commision has previously stated that the costs of undergrounding transmission lines should not be passed on to the ratepayer.

On September 18, 2023, one of the commissioners filed the following amendment to the Commission's Proposed Order from September 1, 2023.

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."

On October 4, 2023 the Proposed Order with the above mentioned amendment was adopted by the Commision in a 4 to 1 vote. This amendment is the Policy Statement that has prompted the Petitioner to request Council review.

In May 2024, Tucson Electric filed a Certificate of Environmental Compatibility with the Line Sitting Committee. In this Certificate, Tucson Electric cited to the policy statement stating " Consistent with the Commission's Policy Statement…. requiring undergrounding would render the Project unreasonably restrictive and not feasible."

The Commision approved Tucson Electric's application for the Certificate in September 2024, and included the following finding of fact "However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available."

A.R.S. § 40-360.06(D) says in part "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or

regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available…."

On September 3, 2024 Petitioner filed a petition for Commission review under A.R.S. § 41-1033(A). The Petitioner stated that the Policy Statement identified above should be treated as a rule, along with not being specifically authorized by statute, exceeding statutory authority, and is unduly burdensome.

On October 31, 2024 the Commission provided a written rejection to the Petitioner with the Commission alerting the Petitioner of their ability to appeal to the council pursuant to A.R.S. § 41-1033(E).

Petitioner's Arguments

As indicated above, the Petitioner alleges that the policy statements adopted by the Commision on October 4, 2024 exceeded their authority because the policy statement was being treated as a rule in practice. The Petitioner argues that the Commission provided the policy statement to the Line Siting Committee to guide the Line Siting Committee on ratepayer recovery and undergrounding of powerlines, both of which exceed the jurisdiction of the Line Siting Committee according to the Petitioner. The Petitioner specifically states that the Line Siting Committee is strictly focused on identifying routes for transmission lines and the sole authority for how a utility recovers cost from ratepayers is with the Commission itself. The Line Siting Committee cannot "preemptively determine the cost recovery outcomes of the ratemaking process."

The Petitioner states that the Commision knew this policy statement exceeded their authority because in June 2023 the Commission's legal counsel warned of jurisdictional issues and recommended formal rulemaking. This statement can be found in Docket No.ALS-00000A-22-0320. The Petitioner also states that a Commissioner acknowledged these jurisdiction hearings during a September 2023 hearing as well.

The Petitioner further contends that when Tucson Electric Company "TEP" applied for a "Certificate of Environment Compatibility "CEC", the Line Siting Committee relied on the policy statement to "preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible." The Petitioner also states that the Commission's argument that the policy statement only repeated what the Arizona Supreme Court held was misguided because a utility can be held responsible for costs related to undergrounding without that costs being passed on to the ratepayer. The Petitioner offered the following as support of his position that the Policy Statement was not merely a recognition of state law; "The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense." *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 451 (1980).

Summary of Commission Review

As a result of the Petitioner initially filing a request of review of the substantive policy from the Commission in accordance with A.R.S. § 41-1033, the commission was required to either provide a detailed rejection of the petition, or if the substantive policy was actually a rule to engage in rulemaking. The Commision rejected the request by written response to the Petitioner on October 31, 2025. The Commission's full response can be found in the attached materials, a brief overview will be provided below.

The Commision does not consider the Policy Statement to be a rule because the policy statement was based on existing statutes and rules. The Commission specifically cited A.A.C R14-2-206(b)(2)(c) and A.R.S. §§40-341, et. and A.R.S. § 48-620.

For the argument that the Policy Statement constitutes a rule, the commision states that the Policy Statement is not a rule because the Policy Statement is merely restating state law. The Commision cites A.R.S. § A.R.S. § 40-364(F) and R14-2-206(b)(2)(c) as to where this authority lies.

For A.R.S. § 40-364(F), the Commission emphasizes that the statute "grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "'shall set forth the underground conversion costs to be charged to each lot or parcel.'"" Commision 10/31/24 Response pg 12. The Commision states that the cost for undergrounding can only be passed on to those who directly benefit from the undergrounding and not to a generalized population.

The Commission believes that the existing rule and statutes specify that no unnecessary cost should be passed on to ratepayers, any costs should be absorbed by those who benefit. (*Id.* at. 3).

For the *Paradise Valley* case cited by the Petitioner, the Commision states the following "These decisions do not support Mr. Dempsey's position. Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of Undergrounding." (*Id.* at 13).

Relevant Statutes and Regulations

A.R.S. § 41-1033(E) allows a person to "to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule." The agency must have rejected the petitioner's request for the Council to hear. If rejected, the Petitioner has 30 days to submit a five page double spaced appeal to the Council.

A.R.S. § 41-1033(G) allows "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."

If the Council receives information pursuant to A.R.S. § 41-1033(G), 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, whether the final rule meets the requirements prescribed in section 41-1030 or whether 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 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 or whether the final rule meets the requirements prescribed in section 41-1030 or whether 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.

   See A.R.S. § 41-1033(H).

A.R.S. §41-1001(17) states: "'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."

A.R.S. § 41-1001(24) states ""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."

A.R.S. § 40-360.06(A) states that "The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:...

(A)(8) . “The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.”

(A)(9). Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

R14-2-206(b)(2)(c) states “"[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

The following is Council staff’s opinion as to whether the policy statement constitutes a rule or if it exceeds the Commission’s statutory authority.

The Policy Statement can be broken into two parts. Part 1 states, “As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates.” Council Staff believes that the Commission is correct when the Commission states that this is just a restatement of the existing law and authority. Absent any other law and requirements, the Commission has an obligation to ratepayers to ensure the lowest possible costs.

Absent any other law or authority on undergrounding, a stakeholder who benefits would be responsible for paying for these benefits, and not the ratepayers as a whole. This is supported by R14-2-206(b)(2)(c), A.R.S. §§ 40-347 and 48-620.

Part 2 of the Policy Statement states, “Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq.”

The language in Part 2 is ultimately where the dispute arises. The plain text of the Policy Statement states that those who wish to fund an underground transmission line may do so, ***among other ways,*** by forming an improvement district. The plain text does not prohibit a utility

to be responsible for undergrounding or for a municipality to require underground through zoning or an ordinance. The Policy Statement only states that one way to do this is through an improvement district as provided in A.R.S. § 48-620 *et. seq.* The Policy Statement is not saying that this is the only way, it is just among the ways. Council staff agrees with the Commission that the Policy Statement as written only restates what exists in law and does not add any additional requirements.

However, based on the Petitioner's allegations, a question emerges regarding whether the Commission is using this Policy Statement as an Agency Practice to exceed their statutory authority when it comes to interfering with a municipalities authority to require undergrounding and whether the beneficiary must always pay for the undergrounding. The Petitioner does seem to touch on this subject in their jurisdictional argument. Council staff recommends that the Council inquire further regarding this issue based on the analysis in the *Paradise Valley* case provided by the Petitioner and outlined in more detail below. A copy of the full case text has also been provided in the materials for the Council's consideration.

In *Paradise Valley,* the question was raised whether cities and towns had the authority to direct the undergrounding of public utility poles. *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 448 (1980). In this case, the court said that while property owners may petition for the creation of an underground conversion district, ***this does not prevent the town from mandating at utility expense.*** *Id.* at 451. The court further determined that, because A.R.S. § 40-360.06(D) mentions ordinance, master plan or regulation, this language supports the notion that cities and towns have the power to require undergrounding. *Id.* The court ultimately held "We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries." *Id.*

The Commission does not dispute that local governments have the ability to mandate undergrounding. *Commission 10/31/24 Response* Pg. 12. The Commission believes that mandating undergrounding is separate from allocation of costs of undergrounding. *Id.* It appears that the Commission believes that costs for undergrounding can only be passed on to property owners who benefit because the sole authority to allocate costs on undergrounding lies with the Commission. *Id.* at 12-13. The Commission states that *Paradise Valley* does not support the Petitioner's position "these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding." *Id.* In relation to *Paradise Valley,* the Commission also states " Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in A*rizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However,that does not address who should pay."

However the Petitioner is quoting *Paradise Valley* because it states that a town can mandate undergrounding at the utilities expense. *Petition*, Pg. 4. The Commission does not address the possibility of a local government requiring a utility to cover these expenses. The *Paradise Valley* court rejected the notion that the legislature created underground conversion districts for the purpose of only property holders being responsible for the costs of undergrounding. *Paradise Valley,* at 451.

These improvement districts and service areas were in place at the time of the *Paradise Valley* decision and were cited by the court directly as being unpersuasive that the legislature intended to prevent local governments from mandating undergrounding at a utilities expense. In the CEC approval as referenced in Decision 79550 pg 15, the Committee relied on the Policy Statement and said that funding must come from someone other than TEP's utility rates or from TEP, absent an agreement between the parties.

In Docket No.ALS-00000A-22-0320 pg3, the Commission states "The facts of each case are unique. and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted." This sentiment does not appear in the Commission's response to Petitioner. This Docket is also where the Commission mentions that the line siting committee does not have jurisdiction over ratepayer recovery. *Id.*

Based upon the Commission's TEP undergrounding decision and what has been provided by Petitioner, staff believes that the Petitioner may have brought an agency practice that is not expressly authorized under the Commission's statutory authority.

If it is indeed the Commission's position that undergrounding costs can only be shared among those who are beneficiaries or those that have opted into a district, then staff believes that this raises the question; whether absent an improvement district, conversion service area, or commitment that the requesting customer would pay, then would the Commission always rule that an ordinance, master plan, or regulation to be considered as "unreasonably restrictive and compliance therewith is not feasible." It also raises the question if this is considered determining ratepayer responsibility and whether that is within the jurisdiction of the line siting committee, as found in A.R.S. § 40-360.06.

Essentially, while a town may pass a zoning ordinance requiring that all transmission lines be undergrounded, this ordinance would not be followed unless there is an improvement district, conversion service area, or commitment that the requesting customer pays for the cost. This would remove the possibility that the utility will pay for these costs, which according to *Paradise Valley* is a possibility. Council staff does not believe there is clear statutory authority for the Commission to declare that a utility should not be held financially responsible for undergrounding based upon the *Paradise Valley* decision.

In conclusion, the Commission stated in Decision 79550, that the Policy Statement provided guidance to find that TEP did not need to pay for the undergrounding. The Policy Statement is silent on whether a utility can be financially responsible for undergrounding. This silence does not mean the Policy Statement advises that a utility cannot be financially responsible for undergrounding because in *Paradise Valley*, the court mentioned that while a town can pay for these costs either through agreement or an improvement district, they are under no obligation to do so. However, in practice the Commision appears to be treating the absence of language as justification for not allowing the utility to pay.

As stated above there are requirements or standards to guide the Council in determining whether this petition should be given a hearing. If the Council believes that the only issue at hand is whether the Policy Statement is a rule or not and whether the Policy Statement is within the Commission's statutory authority. In this scenario, Council staff believes that the Policy Statement is not a rule because it merely restates the law (the policy statement does not have to mention every payment possibility), which is that costs associated with undergrounding cannot be passed on to the ratepayers.

Should the Council believe that the Petitioner may have brought an agency practice that exceeds the Commission's authority then Council Staff does recommend the Council ask the following of the Commission and Petitioner:

- Does the Commission allow for a utility to be financially responsible for the costs associated with undergrounding?
- For the Petitioner's line siting Committee jurisdictional argument over ratemaker recovery, can the Commission clarify as it relates to the TEP matter, if the Commission was consistent with pg. 3 of Docket No. ALS-00000A-22-0320?
- For the Commission, what is the extent, if any, for the Committee to ask about potential impacts on ratepayers, either under A.R.S. § 40-360.06, or other Committee statute.
- For the Petitioner, Council staff recommends the Council ask the Petitioner of the applicability of A.R.S. § 40.360.06(A)(8)? This relates to the jurisdictional question, under this statute why did the Committee overstep its jurisdiction in considering the potential costs that could be passed to customers?
    - This statute allows the committee to approve or deny an application and the Committee may consider the cost of the facilities and sites, and recognize that these costs may increase the costs to customers or the applicant.

Underground Arizona, Inc.
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(520) 360-0590

November 8, 2024

Governor's Regulatory Review Council
100 N Fifteenth Ave • Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Members of the Governor's Regulatory Review Council,

Underground Arizona hereby appeals to the Governor's Regulatory Review Council (the "Council"), pursuant to A.R.S. § 41-1033(E), for a determination that the Arizona Corporation Commission's (the "Commission") October 4, 2023 Policy Statement, as outlined herein, is a rule or is otherwise "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[1]

Underground Arizona submitted an A.R.S. § 41-1033 petition to the Commission on September 3, 2024.[2] The petition was rejected by written letter on October 31, 2024.[3] In the rejection letter, the Commission wrote: "The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]" Footnote 3 cited A.R.S. § 41-1033(E), which is the Council's review process.

BACKGROUND

1. **On February 20, 2023**, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement on undergrounding transmission lines (pg. 4):[4]

   "The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be

[1] See e.g. A.R.S. 41-1033(G).
[2] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000038251.pdf
[3] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000039777.pdf
[4] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000024350.pdf

helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding."

2. **On June 30, 2023**, the Commission's Legal Division issued a memo stating the following regarding TEP's request (pg. 3):[5]

> *"If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*

3. **On September 1, 2023**, the Commission's Legal Division filed a Proposed Order that did not include a policy statement on rate recovery or undergrounding.[6]
4. **On September 18, 2023**, Commissioner Myers filed Proposed Amendment No. 1, which proposed inserting the following policy statement on undergrounding into the Legal Division's Proposed Order:[7]

> "*3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

5. **On September 21, 2023**, at the Commission's Open Meeting, in regard to Commissioner Myers' Proposed Amendment No. 1, the following statement was made:[8]

> ***Commissioner Myers:*** *"I think it is beneficial to clarify the Commission's stance on [rates and undergrounding] but at the same time make sure that it's clear that we don't have jurisdiction over [rates and undergrounding] when it comes to line siting stuff."*

[5] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000027753.pdf
[6] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030426.pdf
[7] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030810.pdf
[8] Item 33. https://azcc.granicus.com/player/clip/5766?view_id=3&redirect=true

6. **On October 4, 2023**, The Commission formally issued Decision No. 79140 by a vote of 4 to 1, with Commissioner Tovar dissenting, which adopted three policy statements, including Commissioner Myers Proposed Amendment No. 1 on undergrounding (the policy statement).[9] In Finding of Fact 1, the Commission wrote that the purpose of policy statements was to "guide" the Line Siting Committee (pg. 1).
7. **On May 24, 2024**, TEP filed a Certificate of Environmental Compatibility ("CEC") application with the Line Siting Committee ("the Committee"). In it, and based on the policy statement, TEP made the following request (pg. 30):[10]

   > *"Consistent with the Commission's Policy Statement, given the excessive cost of undergrounding, and the resulting impact on rates, requiring undergrounding would render the Project unreasonably restrictive and not feasible."*

8. **On September 13, 2024**, In Decision No. 79550, the Committee and Commission approved TEP's application for a CEC, which included the following findings of fact (pg. 15):

   > *"10. However, **given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023),** the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available.'"* [Emphasis Added]

ANALYSIS

The *ex-ante* line siting process is administered by the Line Siting Committee and focused on identifying routes for transmission lines.[11] It is governed by A.R.S. § 40-360 et seq. The *ex-post* ratemaking process is administered by the Commission and is focused on how a utility recovers costs from ratepayers. It is governed by A.R.S. § 40-361 et seq. Each process has independent jurisdiction and operates according to its own rules and procedures. To put it another way, the line siting process is not an early stage of ratemaking; while costs may be considered in route selection, the process cannot preemptively determine the cost recovery outcomes of the ratemaking process—or vice versa.[12]

On February 20, 2023, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement to guide the Line Siting Committee on ratepayer recovery and undergrounding (Background 1). On June 30, 2023, the Commission's legal counsel warned that such a policy statement would be outside the scope of the line siting statute and a formal rulemaking would be required

[9] Docket L-00000C-24-0118-00232: https://docket.images.azcc.gov/0000209995.pdf
[10] https://docs.tep.com/doc/projects/mrp/MRP-CEC-Application.pdf
[11] In this context, ex-ante means before a project is built and ex-post mean after a project is built.
[12] As evidence, SRP's rates are not regulated by the Commission but its transmission lines require approval by the Line Siting Committee.

(Background 2). On September 21, 2023, at a Commission hearing, Commissioner Myers further acknowledged these jurisdictional problems (Background 5). Despite this, on October 4, 2023, in Decision 79140, the Commission issued a line siting policy statement on ratepayer recovery and undergrounding without undergoing a formal rulemaking (Background 6).

On May 24, 2024, TEP applied for a Certificate of Environmental Compatibility ("CEC") from the Commission (Background 7). On September 13, 2024, in Decision 79550, the Commission granted the CEC. In the CEC, the Line Siting Committee relied on the Policy Statement to preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible (Background 8). Thus, the Policy Statement has been treated as a binding rule in practice.

By providing guidance to the Line Siting Committee through a Policy Statement on subjects for which the Line Siting Committee explicitly lacks jurisdiction, the Commission has deliberately confused process and acted in a manner that is "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[13,14] The bottom line is: why does the Line Siting Committee need to be guided by the Commission on items for which the Line Siting Committee lacks jurisdiction? If the point is not to exert extra jurisdictional authority, then what is it? Why doesn't the Commission simply make a non-line siting policy statement on undergrounding costs?

In its response to Underground Arizona's petition, the Commission said (pg. 5), "The jurisdiction of the Line Siting Committee is not at issue here." We disagree. It is the *only* thing at issue here. The Commission's arguments about its ratemaking or other jurisdiction are strawmen and not in dispute.

The Commission went on to say (pg. 5): "The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding." Here, the Commission also errs. According to the Arizona Supreme Court, in APS v. Town of Paradise Valley (1980), state law does not limit cost recovery to non-utility parties (p 451):

> *"The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility* [under state law]*, does not prevent the Town from mandating the undergrounding* ***at utility expense****."* [Emphasis added]

Therefore, the Commission's contention that the Policy Statement is simply a restatement of state law is fatally flawed.[15,16]

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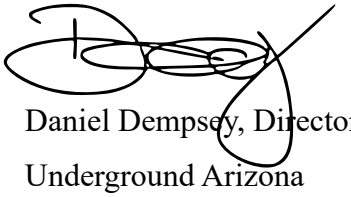
[13] See e.g. A.R.S. 41-1033(G).
[14] See e.g. A.R.S. 41-1091.
[15] Additionally, Underground Arizona has compiled dozens of examples on its website of the utility companies recovering the incremental cost of undergrounding from ratepayers without resistance from the Commission. Thus, its contention that it is disallowed by state law makes little sense.
[16] In TEP v. Board of Adjustment (2024), the Arizona Superior Court said: "*The State has also preempted the City's ability to determine where, but not how, transmission lines are constructed. The State clearly intended the Arizona Corporation Commission (ACC) to have exclusive authority over line siting for high-capacity transmission lines. A.R.S. § 40-360, et seq.*

Frankly, it seems that the Policy Statement's only purpose is for the Commission to improperly exert extra jurisdictional authority over the Line Siting Committee, which it succeeded at doing in practice.

CONCLUSION

For the foregoing reasons, pursuant to A.R.S. § 41-1033 et seq., and at the direction of the Commission, Underground Arizona respectfully requests that the Council hold a public meeting regarding the Commission's Policy Statement, which has been treated as a rule in practice, and determine it void as contrary to law.

Sincerely,



Daniel Dempsey, Director
Underground Arizona

See also 1971 Session Laws Ch 67, § 1. The purpose of this is to simplify the process of expanding Arizona's electrical grid, which is necessarily a matter of statewide importance. However, the Court has been unable to locate any law which restricts the City's authority to regulate how transmission lines are constructed. TEP is correct that there is no law which explicitly grants the City the authority to require undergrounding, but neither is there a specific law which purports to exempt utilities from all zoning regulations. Therefore, the Court finds that, as a matter of law, the City has the authority to require undergrounding of transmission lines." It is only reasonable to assume that an applicant pays the cost of complying with zoning regulations. The burden of proof that a municipality pays for the zoning compliance of any party is on TEP.

Douglas R Clark
Executive Director

Thomas Van Flein
General Counsel
Office of General Counsel

ARIZONA CORPORATION COMMISSION

Office of General Counsel

October 31, 2024

Mr. Daniel Dempsey
daniel@undergroundarizona.org

Re: *Petition to Invalidate Policy Statement 3 of Decision No. 79140*
Docket No. AIS-00000A-22-0320

Dear Mr. Dempsey:

This letter is the Arizona Corporation Commission's ("Commission") formal response to the September 10, 2024, Petition you filed in accord with A.R.S. § 41-1033(A).[1] A person may petition an agency to make, amend, or repeal a rule, or to review an existing agency practice or substantive policy statement that the petitioner alleges constitutes a rule. The petition must follow specific procedural requirements, including stating the reasons for the petition and providing supporting information. The Petition here meets the statutory requirements and thus the Commission is compelled to file this response.

For the reasons set forth below, the Commission denies your Petition as redundant, since your request to either invalidate an informal policy as an impermissible rule, or to have the policy enacted as a rule, is unnecessary. There exists already a formally adopted rule addressing the costs of undergrounding transmission wires, and two separate statutory regimes addressing undergrounding, thus the policy mentioned in Decision No. 79140 (October 4, 2023) is based on an existing, valid rule or statute. *See* A.A.C. R14-2-206(b)(2)(c). The Line Siting Committee's reliance on that rule and policy, in Line siting Docket No. L-00000C-24-0118-0232, Certificate of Environmental Compatibility (July 29, 2024) was therefore correct and legally warranted. *See*, Decision No. 79550 (September 13, 2024).

In addition to the rule, the policy is based on state law. Pursuant to A.R.S. §§ 40-341, et. seq., public service corporations can install underground transmission lines (1) *at their own*

[1] This statute provides, in relevant part:
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.

expense (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of "underground conversion service areas" and each landowner within the "conversion area" must pay "the costs" for undergrounding to the public service corporation. The Decision advisory also cited A.R.S. § 48-620, which involves the creation of an improvement district established by a municipality via petitions from impacted property owners, for purposes of undergrounding. This statutory regime also requires the property owners to pay pro rata for the costs of undergrounding. Thus, under both the rule and the statutes, the costs of undergrounding cannot be recovered in the general utility rates.

The Commission policy in Decision No. 79140 fully complies with and is based upon these established laws. There are three lawful methods to pay for undergrounding:[2] (1) the utility can pay with no rate recovery; (2) an improvement district can be created, and the impacted property owners can pay; or (3) a conversion district can be created, and the impacted property owners can pay. No state law authorizes the costs of undergrounding to be spread among all ratepayers.

A complete analysis is provided below.

A. The Petition Is Validly Filed

The Petition from Mr. Dempsey is brought pursuant to A.R.S. § 41-1030. This statute provides that agencies must not make informal policies or guidelines that have the effect of being a rule of general application, nor can agencies make rules that exceed their statutory or Constitutional rulemaking authority.

The Petition here properly follows Arizona law, and the Commission informed the public in Attachment A, page 1, Note 1, of Decision No. 79140, of the public's right to file such a petition. Accordingly, a response from the Commission is required. The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]

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[2] The Commission is aware that other sources, unrelated to ratepayers, could theoretically exist, such as legislative grants.

[3] A.R.S. § 41-1033(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."

B. The Advisory Statement and Contentions.

1. The Guidance in Decision No. 79140

At issue is the following statement in Decision No. 79140, which provides:

> 3. The Commission does not have express jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. §§ 48-620 *et seq.*

Commission Decision No. 79140, ¶ 15. The above guidance statement was enacted on October 4, 2023. The guidance pertains to excluding the costs of undergrounding from recovery through rates. The guidance makes clear that those requesting and benefitting from undergrounding should pay for the costs of undergrounding, not ratepayers in general. As fully discussed below, this mirrors state law.

In a recent Line Siting Committee decision, the Committee referred to this guidance as a policy to which it will adhere. The Committee explained:

> [G]iven the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or patent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground

> through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

Line Siting Committee, Certificate of Environmental Compatibility, p. 15 at ¶ 10, Docket No. L-00000C-24-0118-232 (July 29, 2024). Thus, the Committee logically deemed the guidance to be a policy it should follow, even without reference to the rule and passing reference to the improvement district statute.

In addition to the Committee's analysis and application of the guidance, the Commission's legal division provided guidance in a June 14, 2023, memorandum, in which it stated:

> It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines.

Legal Division Memorandum, p. 16, Docket ALS-00000A-22-0320 (June 14, 2023). While the Line Siting Committee does not have express jurisdiction over undergrounding transmission lines,[4] and it does not have jurisdiction over ratepayer recovery of costs, the Commission does have jurisdiction over the rate allocations and underground conversion service areas.

The Committee's action to comport with Commission guidance is prudent and warranted. Moreover, both the Commission and the Committee are of aware of, and seek compliance with, state law regarding improvement districts and conversion districts. The Line Siting Committee has every reason, and obligation, to comport with state law, which plainly disallows undergrounding costs to be allocated among all ratepayers. Any decision by the Line Siting Committee would be reasonable to take those restrictions into account, and doing so does not assert jurisdiction over rates or over undergrounding.

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[4] The Commission does, however, have jurisdiction in some circumstances to approve undergrounding in conversion service areas. ARS 40-344(J): "The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government"); and (K): "If the underground conversion service area contains overhead electric or communication facilities of a public service corporation and public agency, then neither the public service corporation nor the public agency shall be required to commence conversion until the corporation commission's order, the board of supervisors' order or the city or town council's order has become final." Query whether the Line Siting Committee should have the initial review of the creation of a conversion service area inasmuch as it has the technical and historic expertise on line siting issues.

C. The Commission Has The Legal Authority To Create an Advisory Policy Consistent With and Based on State Law.

The Petitioner asserts that the Commission does not have the Constitutional or legislative authority to create and enforce the guidance or policy that was set forth in Decision No. 79140. This is not correct.

In the Petition, p. 1, it is alleged that:

> In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers, or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. § 40- 360.06(D). If the underground costs were determined recoverable from ratepayers or the utility, this A.R.S. § 40-360.06(D) determination could not be made.

The Petition also asserts that the Commission legal counsel "warned" that adopting a policy within the line siting rules would be "outside the scope of authority granted under the line siting statute" and that "the Line Siting Committee does not have jurisdiction over underground transmission lines." The jurisdiction of the Line Siting Committee is not at issue here. The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding. At issue is the ability of the Commission to have rules and policies regarding rates and recovery of costs, and this is definitively within the core jurisdiction of the Commission. The Committee merely recognized the Commission's role over rates, but in no manner did the Committee attempt to exert its authority extra jurisdictionally.

The letter referred to in the Petition from the Legal Division, dated June 14, 2023, did not refer to the rule here, A.A.C. R14-2-206(b)(2)(c) (the costs for undergrounding single phase (residential mainly) service lines to be paid by the user), or the undergrounding statutes pertaining to conversion and improvement districts. The Commission adopted the recommendations from the Legal Division as far as it went, stating: "We adopt Legal Division's recommendation: however, the Commission's Policy Statement shall also include the following" and thereafter the Commission set forth the guidance based on A.A.C. R14-2-206(b)(2)(c)). In this manner, the Commission did not err.

The Commission rule to prevent the extra costs of undergrounding from being rolled into general ratepayer rates is a core rule based on the Commission's plenary authority to

govern reasonable and just rates. Decision No. 79140 expressly noted that "The Commission has jurisdiction over the subject matter..." (Commission Decision No. 79140 at p. 3). The Commission has made it clear to the Municipalities, and others, that undergrounding is not prohibited. The Petition's reference to state law allowing municipalities to order undergrounding is not at issue and not in conflict. The Commission is simply noting that the very high cost of undergrounding, and the reliability and maintenance problems associated with undergrounding, cannot be recovered in the general rates—a core jurisdictional issue for the Commission. Further, as noted above, state law mirrors this advisory.

The Commission even referred those who want undergrounding (including Municipalities) to a possible method, such as creating an improvement district under A.R.S. § 48-620. (Decision No. 79140 at p. 3). More directly however, are the underground conversion districts set forth in A.R.S. §§ 40-341 *et. seq*. State law mandates that the requesting party or parties, and the beneficiary property owners, pay for all undergrounding costs.

There are multiple sections of statute and rules that address undergrounding:

A.A.C. R14-2-207: This regulation outlines the requirements for utilities regarding distribution line extensions, including underground extensions in subdivision developments. It specifies that single-phase electric lines necessary to furnish permanent electric service to new residential buildings or mobile homes within a subdivision must be installed underground unless it is not feasible from an engineering, operational, or economic standpoint. Under R14-2-206(B)(2)(b), costs are not allowed to be allocated to general ratepayers and the "customer requesting an underground service line in an area served by overhead facilities shall pay" for the costs of undergrounding. These rules establish jurisdiction of the Commission to address special conditions, exceptions, and approval of line extensions and who should pay.

A.R.S. § 48-620: This statute states that the assessment for an underground electrical power line shall be assessed against only the property owners benefiting from the burial of the power line.

A.R.S. § 40-342, 40-344, 40-346 & 347: These statutes provide the petition procedure for establishing an underground conversion service area, including the requirement for a hearing by the corporation commission, to determine the feasibility and approval of the conversion service area. Under A.R.S. 40-347, the underground conversion costs are to be allocated to each lot or parcel of real property within the underground conversion service area—not to the general ratepayers. ARS 40-343(F) (requiring "the estimated costs to be assessed to each

> lot or parcel of real property for placing underground the facilities of the public service corporation.").[5]

Should the Commission want to adopt the advisory as a formal rule, it could do so, and it would be in harmony with state law and public policy. The Arizona Constitution, Article 15, Section 3, grants the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state." *State v. Tucson Gas, Elec. Light & Power Co.,* 15 Ariz. 294 (1914). This constitutional provision vests exclusive power in the Commission to govern public service corporations, except where the Constitution explicitly grants such power to the Legislature. *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 300-301. The Commission authority includes judicial, executive, and legislative powers, allowing it to adopt rules and regulations, as well as to adjudicate issues, and set rates. *Miller v. Arizona Corp. Com'n*, 227 Ariz. 21, 24-25 (2011).[6]

The Commission's creation and powers stem from the framers' intent to protect the public from corporate abuses and overreaching, granting it extensive regulatory authority unique among state commissions. *Burns v. Arizona Public Service Company*, 254 Ariz. 24 (2022). This historical context underscores the Commission's role in ensuring effective regulation and consumer protection. *Miller v. Arizona Corp. Com'n*, 227 Ariz. at 28-29. The Commission is also obligated to protect and prevent unfairness to consumers and ratepayers. Thus, compelling non-beneficiaries to pay for the costs of undergrounding has been deemed unfair and unreasonable by the Commission in its advisory policy, a policy that mirrors the state legislature's undergrounding statutory plan. In short, the Legislature and the Commission concur that the costs of undergrounding cannot be shared among non-beneficiaries as defined by law.

D. The Advisory Policy Mirrors Existing State Law.

As noted, the Petitioner is operating under the misimpression that the guidance and policy statement set forth in Decision No. 79140 is not based on an existing rule or state law and thus constitutes a new "rule" that was enacted without following the procedures of the Administrative Procedures Act (APA). The Petitioner errs.

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[5] It is notable that the Commission has jurisdiction over petitions to underground "transmission lines" at "nominal voltages in excess of twenty-five thousand volts, or having a current capacity in excess of twelve thousand kva." ARS 40-342(E). This raises the question whether the Line Siting Committee should have the opportunity to address transmission line undergrounding petitions over 25Kv as it has expertise in this.

[6] Arizona statutory law, A.R.S. § 40-202, further confirms the Commission's authority to regulate public service corporations and to adopt rules necessary for this purpose. Specifically, the statute empowers the Commission to protect the public against deceptive practices, ensure confidentiality of customer information, and regulate contractors working with regulated entities. *Id.* The statute also mandates the Commission to encourage competition and growth in the telecommunications industry and to establish procedures for regulating competitive markets. *Id.*

The advisory policy in Decision No. 79140 is based on a previously enacted rule that complies with the APA as well as a state statutory scheme pertaining to undergrounding. The rule regarding undergrounding enacted in accordance with the APA, A.A.C. R14-2-206(b)(2)(c), provides:

> "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

A.A.C. R14-2-206(b)(2)(c). Thus, this validly enacted rule establishes that the cost of undergrounding shall be borne by the "customer requesting underground service." The advisory policy reiterates this rule.

In addition to this rule, there is an extensive statutory scheme that also mandates that the customers who seek, and benefit from, undergrounding, shall pay for the costs of undergrounding, not the ratepayers in general. Specifically, A.R.S. § 40-342(F) provides:

> A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission advisory reflects this statutory payment scheme. The costs of undergrounding are to be paid for by the customers requesting and benefitting from the undergrounding. If the advisory is deficient, it is that it did not expressly refer to the rule and the statutes. But that is not required.

The Commission agrees that there is a rule already enacted, and the advisory statement in the decision is consistent with that rule.[7] Under the APA, a "rule" is defined as an agency

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[7] "An entity's internal guidelines, however, are not rules." *Duke Energy Arlington Valley, LLC v. Ariz. Dep't of Rev.*, 219 Ariz. 76, 80, ¶ 18, 193 P.3d 330, 334 (App.2008). Whether the advisory constitutes an "internal guideline" need not be addressed inasmuch as there is an existing APA-enacted rule and a statutory regime that mirrors the advisory.

statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. *Phoenix Children's Hosp. v. Arizona Health Care Cost Containment System Admin.,* 195 Ariz. 277 (1999); A.R.S. § 41-1001(17).

In the present matter, there is existing state law and a state rule, all compelling the allocation of the undergrounding costs on those directly benefitting from the undergrounding. The advisory merely parrots those statutes, and the Commission need not formally adopt a potentially redundant rule.

The Commission, however, could adopt a formal rule on allocating the costs of undergrounding, if it so chose, as long as the formal rule was consistent with state law. The challenge to the undergrounding advisory pertains directly to rate making (i.e., can the costs of undergrounding be shared among all ratepayers), a core function of the Commission and one over which it has plenary authority. Thus, if the Commission so chose, it could enact the advisory as a stand-alone rule. Whether it should do so is a decision it can deliberate upon,[8] but the fact remains the advisory policy is itself consistent with an APA-enacted undergrounding cost rule and two statutory undergrounding cost statutes.

The Commission has the Constitutional authority to establish rules that pertain to public service corporation rates. The advisory statement at issue clearly pertains to the costs of undergrounding of utilities and the exclusion of those costs from being foisted upon classes of ratepayers who did not request, and do not benefit from, the undergrounding of utilities. This is within the Commission's Constitutional authority and is aligned with legislative policy.

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[8] The rules pertaining to rate making can be created and enacted by the Commission without approval of the Attorney General or the APA. *See U S West Communications, Inc. v. Arizona Corp. Com'n*, 197 Ariz. 16 (1999) (appellate court invalidated some Commission rules that were not ratemaking rules and affirmed other rules that were rate making rules, none of which had APA or attorney general review). Courts in general grant deference to the agency's interpretation of statutes and its own regulations. *Arizona State University ex rel. Arizona Bd. of Regents v. Arizona State Retirement System*, 237 Ariz. 246 (2015).

The language in Decision No. 79140 stems from an existing rule and statutory scheme and is therefore valid. Under the rule, A.A.C. R14-2-206(b)(2)(c), whoever requests the undergrounding, and whoever benefits from it geographically (the adjoining properties) must pay for the undergrounding costs: "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However, that does not address who should pay. The Commission, through its advisory, and the Legislature, through statute, has made it clear that the customer mandating or requesting the undergrounding shall pay, and the costs cannot be shifted to all ratepayers.

E. The Guidance Does Not Exceed the Commission's Authority.

Mr. Dempsey asserts that the guidance exceeds the Commission's constitutional and statutory authority. On that basis he seeks its invalidation. This is incorrect because the Commission has plenary constitutional authority to make rules impacting rate designs.

Inasmuch as the guidance in Decision No. 79140 directly pertains to a public service corporation's recovery of costs in undergrounding utilities, Mr. Dempsey errs. The Commission has the Constitutional authority to formulate rules that pertain to rates. The Constitutional power and authority for the Corporation Commission to enact rules for rates are derived from Article 15, Section 3 of the Arizona Constitution. This section provides:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, ***and make reasonable rules, regulations, and orders***, by which such corporations shall be governed in the transaction of business within the state.

Arizona Constitution, Art. 15, Sec. 3 (emphasis added). *See State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 301, 138 P. 781, 784 (1914).

The Arizona Supreme Court has "repeatedly held that the power to make reasonable rules and regulations and orders by which a corporation shall be governed refers to the power to prescribe just and reasonable classifications and just and reasonable rates and charges." *U.S. West Comms v. Arizona Corporation Commission*, 197 Ariz. 16, 23, 3 P.3d 936, 943 (Az. App. 1999) *citing Tonto Creek Homeowners v. Arizona Corporation* 177 Ariz. 49, 56,

864 P.2d 1082, 1088 (App. 1993) (*quoting Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966)).

The Commission is directly vested with rule making authority under the Arizona Constitution, Art. 15, Sec. 3, which means that no legislative action is necessary for the Commission to exercise its ratemaking powers, and it has exclusive authority to set rates and charges. *Johnson Utilities, L.L.C. v. Arizona Corporation Commission*, 249 Ariz. 215, 221, 468 P.3d 1176, 1182 (2020). Additionally, the rules and regulations related to ratemaking issued by the Commission do not require attorney general certification to be effective. Ariz. Const. Art. 15, § 3; *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 115, 83 P.3d 576, 593 (App. 2004). Where the Commission is implementing rules pursuant to its constitutional authority, the rules are not subject to review by the executive branch. *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216, 219, 848 P.2d 301, 304 (App.1992).[9]

The Office of General Counsel concludes that the Commission has the constitutional authority to create a formal rule if it so chooses, as set forth as A.A.C. R14-2-206(b)(2)(c), which the guidance set forth in Commission Decision No. 79140, ¶ 15 reiterated.

F. Is the Guidance a "rule" that should be formally adopted?

Agency guidelines, policies, suggestions or practices may need to be adopted as a rule under the APA when certain criteria are met. The APA defines a "rule" 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. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

A.R.S. § 41–1001(19). The question here is whether the undergrounding guidance in the Decision rises to the level of a "policy" or is simply a reminder of state law and existing rule. Since several state laws require payment by the requesting customer, and the APA enacted rule also mandates the requesting party to pay for undergrounding, the advisory merely reiterates the obvious—the Commission will follow the law and it will not allow costs for undergrounding to be included in general rates. There is not a requirement to

[9] However, submitting a proposed rule to the Attorney General for review under the APA for purposes of determining if the rule is clear, concise, and understandable, if not also within the Commission's authority, can be done voluntarily. If a reviewing court were to conclude, as was done in *U.S. West*, that the rule should have been reviewed under the APA, then there is no harm in submitting to review.

adopt the guidance as a formal rule. The Decision recites what is state law. Adopting a formal rule would be duplicative to some extent.

In addition, A.R.S. § 40-346(F) grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "***shall set forth the underground conversion costs to be charged to each lot or parcel.***" Thus, the Commission policy mirrors state law and state law directs the Commission on allocating costs to the parcel owner of the adjoining property. The costs for undergrounding cannot be included in a generalized rate, but must be assessed against the property owners directly benefitting from undergrounding in the geographic adjacent area.

These regulations and statutes collectively govern the process of undergrounding electrical transmission lines in Arizona, ensuring that the projects are economically feasible, technically sound, and fairly assessed to benefiting property owners. The Decision advisory merely repeats existing law.[10]

State law requires the costs of undergrounding to be borne by the beneficiaries of undergrounding, which is precisely what the Commission guidance emphasized in Decision No. 79140. For example, local governments have the authority to require the undergrounding of utility lines within their boundaries, absent a clear statewide preemptive policy. *Arizona Public Service Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980). The legislature has given cities and towns the power to require the undergrounding of utility lines as part of their zoning powers. *Town of Paradise Valley*, 125 Ariz. at 450-452.

However, the decision to mandate undergrounding is separate from the allocation of costs of undergrounding. As explained, conversion areas and improvement areas are allowed, but the costs are assessed to property owners within the underground conversion service area who benefit from the conversion or undergrounding. A.R.S. § 40-342. As set forth in statute:

> F. A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing

[10] The Commission has jurisdiction over some undergrounding, as conveyed by the Legislature: The Commission has adopted rules that impact and regulate single-phase undergrounding. *See* A.C.C. R14-2-207(E) (regulating "Single phase underground extensions"); (E)(2) ("The utility shall construct or cause to be constructed and shall own, operate, and maintain all underground electric distribution and service lines along public streets"); (d) "Underground service lines from underground residential distribution systems shall be owned, operated and maintained by the utility, and shall be installed pursuant to its effective underground line extension and service connection tariffs on file with the Commission").

> underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission policy comports with Commission rules and state law. The costs of undergrounding are to be paid for by the customers requesting and benefiting from the undergrounding.

The policy at issue in Decision No. 79140 is reflected in the Commission's rules. Specifically, A.A.C. R14-2-206(b)(2)(c) states that, regarding company provided facilities, "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." *Id.* This rule supports the Commission's position because it indicates both that the Commission retains the authority to allocate undergrounding costs, and that Commission previously adopted a rule like its policy at issue.

Mr. Dempsey cites *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980) and *Tucson Electric Power, Co. v. City of Tucson*, Pima County Sup. Ct., Case No. C20235484 (2024), but these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of undergrounding.

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The Petition is denied. The Commission advisory is a restatement of existing law and public policy. While the Commission could adopt another formal rule on allocation of undergrounding costs, it is not required to do so.

Sincerely,

Douglas Clark
Executive Director, Arizona Corporation Commission

Approved as to form and content:

Thomas Van Flein, General Counsel
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cc: Commissioner O'Connor, Chairman
Adam Stafford, Chairman, Line Siting Committee
Mike Dailey, Deputy General Counsel
Maureen Scott, Associate General Counsel, Chief of Litigation and Appeals
Eli Golob, Associate General Counsel

Underground Arizona
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(I consent to service by email.)

September 3, 2024

ATTN: Legal Division
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

RE: A.R.S. 41-1033 Petition to Repeal Policy Statement 3 of Decision 79140

Dear Legal Division,

Pursuant to A.R.S. 41-1033, Underground Arizona is petitioning the Arizona Corporation Commission ("ACC") to repeal Policy Statement 3 of Decision 79140 ("PS3"), adopted on October 4, 2023, which is being treated as a rule.[1] Pursuant to A.R.S. 41-1033(G), PS3 "is not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."

In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. 40-360.06(D).[2,3,4] Therefore, the ACC attempted to pre-empt local laws in the line-siting process via a ratepayer recovery pre-determination based on a mere policy statement that went through no formal, public rulemaking process and no ratemaking process.

As the record in Line Siting Case 232 shows, Arizona utilities regularly recover the cost of undergrounding transmission (and distribution) lines from ratepayers—even where that

[1] Docket ALS-00000A-22-0320.
[2] Docket L-00000C-24-0118-00232. Finding of Fact 10 and Conditions 3 and 4.
[3] To add insult to injury, in that very case, the utility's application included the incremental cost of undergrounding many miles of distribution lines at millions of dollars in ratepayer expense. The utility also testified that the ratio of distribution to transmission lines in a municipality was about 15:1. As such, if $15 million is spent undergrounding 15 miles of distribution lines, spending $15 million to underground 1 mile of transmission lines should be an equally prudent expense.
[4] And that's to say nothing of the fact that the depreciated cost to ratepayers would be insignificant by any reasonable definition of significance. Otherwise, all a utility's expenses are significant.

undergrounding is not required by law.[5] Indeed, the applicant could not produce a single example of a utility ever being denied the recovery of the incremental costs of undergrounding an electric line, whether that undergrounding was required by law or not.

To that point, the Arizona courts have repeatedly interpreted Arizona's laws as allowing municipalities to require transmission (and distribution) undergrounding at utility expense.[6] Expenses required by law cannot be reasonably determined imprudent and unrecoverable and such a determination would not make those laws unenforceable—it would merely create an undue burden on the utilities. Moreover, the ACC cannot change the law or extend and intermingle its powers through policy statements.[7]

While the ACC has the *ex-post* power to determine what expenses are recoverable from ratepayers in the ratemaking process, it does not have the *ex-ante* power or expertise to make such determinations in the line siting process. PS3 improperly attempts to confuse and transpose these independent statutory powers to *ex-ante* determine what expenses are recoverable from ratepayers. Therefore, PS3 is not authorized by statute, the ACC has exceeded its statutory authority, and it has created undue burdens on the parties.

The ACC's own legal counsel warned of this on June 14, 2023, months before PS3 was adopted: *"It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*[8]

As such, we request that PS3 be repealed pursuant to A.R.S. 41-1033.

Sincerely,

~~Daniel~~ Dempsey
Underground Arizona

Also delivered by email to:
Legal Division: legaldiv@azcc.gov
Utility Division: utildivservicebyemail@azcc.gov
Doug Clark: dclark@azcc.gov
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[5] e.g. Docket L-00000C-24-0118-00232. July 25, 2024 Exhibit Filing Part 3 of 3. UAZ Exhibit 62, Slides 5-9.
[6] e.g. APS v. Town of Paradise Valley (1980) and TEP v. City of Tucson (2024).
[7] e.g. A.R.S. 41-1091.
[8] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/0000209995.pdf?i=1724790821816, page 16

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.

40-360.06. Factors to be considered in issuing a certificate of environmental compatibility

A. The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:

1. Existing plans of this state, local government and private entities for other developments at or in the vicinity of the proposed site.

2. Fish, wildlife and plant life and associated forms of life on which they are dependent.

3. Noise emission levels and interference with communication signals.

4. The proposed availability of the site to the public for recreational purposes, consistent with safety considerations and regulations.

5. Existing scenic areas, historic sites and structures or archaeological sites at or in the vicinity of the proposed site.

6. The total environment of the area.

7. The technical practicability of achieving a proposed objective and the previous experience with equipment and methods available for achieving a proposed objective.

8. The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.

9. Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

B. The committee shall give special consideration to the protection of areas unique because of biological wealth or because they are habitats for rare and endangered species.

C. Notwithstanding any other provision of this article, the committee shall require in all certificates for facilities that the applicant comply with all applicable nuclear radiation standards and air and water pollution control standards and regulations, but shall not require either of the following:

1. Compliance with performance standards other than those established by the agency having primary jurisdiction over a particular pollution source.

2. That a contractor, subcontractor, material supplier or other person engaged in the construction, maintenance, repair or improvement of any project subject to approval of the commission negotiate, execute or otherwise become a party to any project labor agreement, neutrality agreement as defined in section 34-321, apprenticeship program participation or contribution agreement or other agreement with employees, employees' representatives or any labor organization as a condition of or a factor in the commission's approval of the project. This paragraph does not:

(a) Prohibit private parties from entering into individual collective bargaining relationships.

(b) Regulate or interfere with activity protected by law, including the national labor relations act.

D. Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation,

exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available. When it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA.

DOCKET NO. L-00000C-24-0118-00232

CASE NO. 232

DECISION NO. 79550

ORDER

September 5, 2024
Open Meeting

BY THE COMMISSION:

Pursuant to A.R.S. § 40-360 et seq., after due consideration of all relevant matters, the Arizona Corporation Commission ("Commission") finds and concludes that the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") is hereby approved as granted by this Order.

The Commission, in reaching its decision, has balanced all relevant matters in the broad public interest, including the need for an adequate, economical, and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state, and finds that granting the Project a CEC is in the public interest.

The Commission further finds and concludes that in balancing the broad public interest in this matter:

1. The Project is in the public interest because it aids the state in meeting the need for an adequate, economical, and reliable supply of electric power.

2. In balancing the need for the Project with its effect on the environment and ecology of the state, the conditions placed on the CEC effectively minimize its impact on the environment and ecology of the state.

3. The conditions placed on the CEC resolve matters concerning the need for the Project and its impact on the environment and ecology of the state raised during the course of proceedings and, as such, serve as the findings on the matters raised.

4. In light of these conditions, the balancing in the broad public interest results in favor of granting the CEC.

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THE CEC ISSUED BY THE SITING COMMITTEE IS INCORPORATED HEREIN AND IS APPROVED BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN O'CONNOR

COMMISSIONER MARQUEZ PETERSON

COMMISSIONER TOVAR

COMMISSIONER THOMPSON

COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 13th day of September, 2024.

DOUGLAS R. CLARK
Executive Director

DISSENT: _____

DISSENT: _____

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA.	Docket No. L-00000C-24-0118-232 Case No. 232 **CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**

A. INTRODUCTION

Pursuant to notice given as provided by law, the Arizona Power Plant and Transmission Line Siting Committee ("Committee") held public hearings in Tucson, Arizona, on July 8, 2024, through July 19, 2024, in conformance with the requirements of Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* for the purpose of receiving evidence and deliberating on the May 24, 2024 Application of Tucson Electric Power Company ("TEP" or "Applicant") for a Certificate of Environmental Compatibility ("Certificate") authorizing construction of a 138 kilovolt ("kV") transmission line in Tucson, Arizona in Pima County (the "Midtown Reliability Project" or "Project").

The following members and designees of members of the Committee were

present at one or more of the hearing days for the evidentiary presentations, public comment and/or the deliberations:

Adam Stafford	Chairman, Designee for Arizona Attorney General Kris Mayes
Gabby Mercer	Designee of the Chairman, Arizona Corporation Commission ("Commission")
Leonard Drago	Designee for Director, Arizona Department of Environmental Quality
David French[1]	Designee for Director, Arizona Department of Water Resources
Nicole Hill	Designee for Director, Governor's Energy Office
Scott Somers	Appointed Member, representing cities and towns
David Kryder	Appointed Member, representing agricultural interests
Margaret "Toby" Little	Appointed Member, representing the general public
Jon Gold	Appointed Member, representing the general public
David Richins	Appointed Member, representing the general public

The Applicant was represented by Meghan H. Grabel and Elias J. Ancharski of Osborn Maledon, P.A. and in-house counsel for TEP, Megan C. Hill. The following parties were granted intervention pursuant to A.R.S. § 40-360.05: Banner—University Medical Center Tucson Campus, LLC and Banner Health represented by Michelle De Blasi of the Law Office of Michelle De Blasi; City of Tucson represented by Roi I. Lusk and Jennifer J. Stash; Pima County represented by Bobby Yu; and Underground Arizona represented by Daniel Dempsey.

At the conclusion of the hearing, the Committee, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the parties, and (iii) comments of the public, and being advised of the legal requirements of A.R.S. §§ 40-360 through 40-360.13, upon motion duly made and seconded, voted 9 to 0 in

[1] Member French was excused from the second week of the hearing and did not participate in the vote.

favor of granting Applicant, its successors and assigns, this Certificate for the construction of the Project.

B. Overview Project Description

The Project will involve the construction of the new DeMoss Petrie-to-Vine-to-Kino 138 kV transmission line approximately 8.5 miles in length mounted on steel monopole structures. The Project will loop the existing TEP DeMoss Petrie ("DMP") 138 kV Substation to the existing TEP Kino 138 kV Substation with a connection at the planned Vine 138 kV Substation. TEP's preferred route is a combination of Alternative Routes B and 4.

DeMoss Petrie-to-Vine Alternatives

Alternative Route B (Preferred Route) – Preferred Route B leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east for approximately 2 miles on West Grant Road, which turns into East Grant Road at North Stone Avenue. Route B turns south on North Park Avenue for approximately 0.6 miles, then east onto East Adams Street for approximately 0.4 miles, then north on North Vine Avenue for approximately 0.16 miles, terminating at the planned Vine Substation. Alternative Route B is approximately 3.5 miles in length.

Alternative Route D – Alternative Route D leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east on West Grant Road for approximately 2.75 miles, which turns into East Grant Road at North Stone Avenue. Alternative Route D continues east along East Grant Road to North Campbell Avenue, where it turns south to an alignment centered between East Lester Street and North Ring Road for approximately 0.4 miles, turning west for approximately 0.35 miles, where it terminates at the planned Vine Substation. Alternative Route D is approximately 3.8 miles in length.

Vine-to-Kino Alternatives

Alternative Route 4 (Preferred Route) – Preferred Route 4 leaves the planned Vine Substation to the south on North Vine Avenue for a distance of 0.16 miles, turns west on East Adams Street for approximately 0.4 miles, and south onto North Park Avenue for approximately 0.3 miles. At East Speedway Boulevard the route turns west for approximately 0.15 miles, then south on North Euclid Avenue for approximately 1.1 miles, continuing to East 12th Street where it turns west for approximately 0.05 miles and then south for approximately 0.11 miles to span East Aviation Parkway and the Union Pacific Railroad. At South Toole Avenue Route 4 turns south for approximately 0.55 miles, following South Toole Avenue until it turns into South Euclid Avenue at East 16th Street. At East 19th Street the route jogs east for approximately 0.03 miles to then turn south for approximately 1.3 miles to continue on South Euclid Avenue. Route 4 turns east onto East 36th Street for approximately 0.78 miles, which it follows to terminate at the existing Kino Substation. Alternative Route 4 is approximately 5.0 miles in length.

Alternative Route 1 – Alternative Route 1 leaves the planned Vine Substation to the east on an alignment centered between East Lester Street and North Ring Road to North Campbell Avenue for a distance of 0.33 miles. At North Campbell Avenue the route turns south, continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 2.8 miles. Route 1 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell

Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

Alternative Route 1.2 – Alternative Route 1.2 leaves the planned Vine Substation to the south along Vine Road to Mabel Street for a distanced of 0.2 miles. At Mabel Street the route turns east for 0.1 miles to Cherry Avenue. Route 1.2 turns south for a distance of 0.2 miles to Speedway Boulevard. At Speedway Boulevard the route turns east to Campbell Avenue for a distance of 0.25 miles then south on Campbell Avenue continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 1.9 miles. Route 1.2 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1.2 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

The Committee approves the preferred route, B4, and alternative routes D, 1, and 1.2 in their entirety, subject to the Findings of Fact and Conclusions of Law contained herein. A map of the Project, including all of the preferred and alternative routes proposed by the Applicant, is included as **Exhibit A**. Maps of the final approved routes and their respective corridor widths are attached as **Exhibit B**.

CONDITIONS

This Certificate is granted upon the following conditions:

1. This authorization to construct the Project shall expire ten (10) years from the date this Certificate is approved by the Commission, with or without modification ("Time Period"). Construction of the Project shall be complete, defined as the Project being in-service, within this Time Period. However, prior to the expiration of the Time Period, the Applicant may request that the Commission extend the Time Period.

2. In the event that the Project requires an extension of the term(s) of this Certificate prior to completion of construction, the Applicant shall file such time extension request at least one hundred and eighty (180) days prior to the expiration of the Certificate. The Applicant shall use reasonable means to promptly notify the City of Tucson, the City of South Tucson, Pima County, Arizona Department of Transportation ("ADOT"), Arizona State Land Department ("ASLD"), and all landowners and residents within a one (1) mile radius of the centerline of the Project, all persons who made public comment at this proceeding who provided a mailing or email address, and all parties to this proceeding. The notification provided will include the request and the date, time, and place of the hearing or open meetings during which the Commission will consider the request for extension. Notification shall be no more than three (3) business days after the Applicant is made aware of the hearing date or the open meeting date.

3. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, during the development, construction, operation, maintenance and reclamation of the Project, the Applicant shall comply with all existing applicable air and water pollution control standards and regulations, and with all existing applicable statutes, ordinances, master plans and regulations of any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions, including but not limited to the following:

(a) All applicable land use regulations;

(b) All applicable zoning stipulations and conditions including, but not limited to, landscaping and dust control requirements;

(c) All applicable water use, discharge and/or disposal requirements of the Arizona Department of Water Resources and the Arizona Department of Environmental Quality;

(d) All applicable noise control standards; and

(e) All applicable regulations governing storage and handling of hazardous chemicals and petroleum products.

4. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, the Applicant shall obtain all approvals and permits necessary to construct, operate and maintain the Project required by any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions.

5. The Applicant shall comply with the Arizona Game and Fish Department ("AGFD") guidelines for handling protected animal species, should any be encountered during construction and operation of the Project, and shall consult

with AGFD or U.S. Fish and Wildlife Service, as appropriate, on other issues concerning wildlife.

6. The Applicant shall design the Project's facilities to incorporate reasonable measures to minimize electrocution of and impacts to avian species in accordance with the Applicant's avian protection program. Such measures will be accomplished through incorporation of Avian Power Line Interaction Committee guidelines set forth in the current versions of *Suggested Practices for Avian Protection on Power Lines* and *Reducing Avian Collisions with Power Lines manuals*.

7. The Applicant shall consult the State Historic Preservation Office ("SHPO") pursuant to A.R.S. § 41-861 through 41-864, the State Historic Preservation Act. Construction for the Project shall not occur without SHPO concurrence. Any project involving federal land is a federal undertaking and requires SHPO concurrence on the adequacy of the survey and area of potential effects. The Applicant shall coordinate with SHPO regarding the status of Section 106 consultation.

8. If any archaeological, paleontological, or historical site or a significant cultural object is discovered on private, state, county, or municipal land during the construction or operation of the Project, the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum ("ASM"), and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery as required by A.R.S. § 41-844 or A.R.S. § 41-865, as appropriate.

9. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. § 3-901 *et seq.*) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the Project.

10. The Applicant shall make every reasonable effort to promptly investigate, identify, and correct, on a case-specific basis, all complaints of interference with radio or television signals from operation of the Project addressed in this Certificate and where such interference is caused by the Project take reasonable measures to mitigate such interference. The Applicant shall maintain written records for a period of five (5) years of all complaints of radio or television interference attributable to operations, together with the corrective action taken in response to each complaint. All complaints shall be recorded and shall include notation on the corrective action taken. Complaints not leading to a specific action or for which there was no resolution shall be noted and explained. Upon request, the written records shall be provided to the Staff of the Commission. The Applicant shall respond to complaints and implement appropriate mitigation measures. In addition, the Project shall be evaluated on a regular basis so that damaged insulators or other line materials that could cause interference are repaired or replaced in a timely manner.

11. If human remains and/or funerary objects are encountered during the course of any ground-disturbing activities related to the construction or maintenance of the Project, the Applicant shall cease work on the affected area of the Project and notify the Director of the ASM as required by A.R.S. § 41-865 for private land, or as required by A.R.S. § 41-844 for state, county, or municipal lands.

12. One hundred eighty (180) days prior to construction of the Project, the Applicant shall post signs in or near public rights-of-way, to the extent authorized by law, reasonably adjacent to the Project giving notice of the Project. Such signage shall be no smaller than a roadway sign. The signs shall:

(a) Advise the area is a future site of the Project;

(b) Provide a phone number and website for public information regarding the Project; and

(c) refer the public to the Docket.

Such signs shall be inspected at least once annually and, if necessary, be repaired or replaced, and removed at the completion of construction.

The Applicant shall make every reasonable effort to communicate the decision either approving or disapproving the Certificate in digital media.

The Applicant shall also communicate through its Project website the status and location of the route ultimately constructed and the removal and undergrounding of the existing utility infrastructure along that route.

13. At least ninety (90) days before construction commences on the Project, the Applicant shall provide the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, Pascua Yaqui Tribe, and known builders and developers who are building upon or developing land within one (1) mile of the centerline of the Project with a written description, including the approximate height and width measurements of all structure types, of the Project. The written description shall identify the location of the Project and contain a pictorial depiction of the facilities being constructed. The Applicant shall also encourage the developers and builders to include this information in their disclosure statements. Upon approval of this Certificate by the Commission, the Applicant may commence construction of the Project.

14. The Applicant shall use non-specular conductor and non-reflective surfaces for the transmission line structures on the Project.

15. The Applicant shall remove all 46 kV substations and lines, including wires, poles, and other equipment, that are no longer required as a result of the upgraded 138 kV substation and transmission line. Removals are estimated to begin in 2027 and complete by 2037, based on an estimated in-service date of the Vine Substation and associated 138 kV transmission line in 2027.

16. The Applicant shall move all existing parallel overhead lower voltage distribution lines underground, currently located within the same road right-of-way as

the Project as constructed. The Applicant shall notify all joint use attachers within six (6) months of Certificate approval so they can begin design to relocate their facilities.

17. The Applicant shall collaborate with each neighborhood and/or neighborhood association that parallels the route in which the Project is ultimately constructed on residential roads to determine the preferred transmission pole finish for that neighborhood. Pole finishes may include weathering steel, galvanized, or painted in Mojave Sage. In the event the neighborhood cannot decide on a preference following a good faith effort, the Applicant will use the preferred weathering steel pole finish.

18. The Applicant will work with the City of Tucson, as part of the Project, to discuss the potential to incorporate any right-of-way enhancements into the approved route including, but not limited to, multi-use pathways, chicanes, artwork, and landscaping;

19. The Applicant shall be responsible for arranging that all field personnel involved in the Project receive training as to proper ingress, egress, and on-site working protocol for environmentally sensitive areas and activities. Contractors employing such field personnel shall maintain records documenting that the personnel have received such training.

20. The Applicant shall follow the most current Western Electricity Coordinating Council ("WECC") and North American Electric Reliability Corporation ("NERC") planning standards, as approved by the Federal Energy Regulatory Commission ("FERC"), National Electrical Safety Code ("NESC") standards, and Federal Aviation Administration ("FAA") regulations.

21. The Applicant shall participate in good faith in state and regional transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission constraints in a timely manner.

22. When Project facilities are located parallel to and within one hundred (100) feet of any existing natural gas or hazardous pipeline, the Applicant shall:

(a) Ensure grounding and cathodic protection studies are performed to show that the Project's location parallel to and within one hundred (100) feet of such pipeline results in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall take appropriate steps to ensure that any material adverse impacts are mitigated. The Applicant shall provide to Staff of the Commission, and file with Docket Control, a copy of the studies performed and additional mitigation, if any, that was implemented as part of its annual compliance-certification letter; and

(b) Ensure that studies are performed simulating an outage of the Project that may be caused by the collocation of the Project parallel to and within one hundred (100) feet of the existing natural gas or hazardous liquid pipeline. The studies should either: (a) show that such simulated outage does not result in customer outages; or (b) include operating plans to minimize any resulting customer outages. The Applicant shall provide a copy of the study results to Staff of the Commission and file them with Docket Control as part of the Applicant's annual compliance certification letter.

23. The designation of the corridors in this Certificate, as shown in **Exhibit B**, authorizes a right-of-way no greater than 100 feet wide for the transmission line nor does it grant the applicant exclusive rights within the corridors outside of the final designated transmission right-of-way.

24. The Applicant shall submit a compliance certification letter annually, identifying progress made with respect to and current status of each condition

contained in this Certificate. The letter shall be submitted to Commission's Docket Control commencing on December 1, 2025. Attached to each certification letter shall be documentation explaining how compliance with each condition was achieved. Copies of each letter, along with the corresponding documentation, shall be submitted to the Arizona Attorney General's Office. With respect to the Project, the requirement for the compliance letter shall expire on the date the Project is placed into operation. Notification of such filing with Docket Control shall be made to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

25. The Applicant shall provide a copy of this Certificate to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, and the Pascua Yaqui Tribe.

26. Any transfer or assignment of this Certificate shall require the assignee or successor to assume, in writing, all responsibilities of the Applicant listed in this Certificate and its conditions as required by A.R.S. § 40-360.08(A) and R14-3-213(F) of the Arizona Administrative Code.

27. In the event the Applicant, its assignee, or successor, seeks to modify the Certificate's terms at the Commission, it shall provide copies of such request to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

28. The Certificate Conditions shall be binding on the Applicant, its successors, assignee(s) and transferees, and any affiliates, agents, or lessees of the Applicant who have a contractual relationship with the Applicant concerning the construction, operation, maintenance or reclamation of the Project. The Applicant shall provide in any agreement(s) or lease(s) pertaining to the Project that the contracting parties and/or lessee(s) shall be responsible for compliance with the

Conditions set forth herein, and the Applicant's responsibilities with respect to compliance with such Conditions shall not cease or be abated by reason of the fact that the Applicant is not in control of or responsible for operation and maintenance of the Project facilities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Certificate incorporates the following Findings of Fact and Conclusions of Law:

1. The Midtown Reliability Project is required to ensure the continued provision of safe and reliable electric service to TEP customers.

2. While no party disputed the need for the Midtown Reliability Project, certain parties asserted that applicable local ordinances and plans required that portions of the routes be constructed below ground.

3. Constructing the Midtown Reliability Project below ground is not needed for safety, reliability, or other utility operational reasons.

4. Evidence in the record indicates that constructing portions of the Project below ground could be more expensive than constructing the route entirely above ground.

5. As part of the Project as conditioned by this Certificate, TEP will relocate existing overhead distribution lines below ground along the selected route. Additionally, the Project will enable the retirement of up to eight existing 46 kV substations and approximately 19 miles of existing 46 kV lines in the next ten years.

6. The evidence indicated that the Applicant needs the Project to be in service by 2027 to maintain safe and reliable service in order to avoid additional investment in the existing 46 kV system serving the area.

7. The Applicant determined the need for and proposed location of the Vine substation through the use of a saturation study. The actual site was selected based on available land and its immediate adjacent proximity to two (2) existing

substations, one of which is a 46 kV substation that will be retired and removed as part of this Project.

8. In light of the incremental cost of building the Project underground compared to overhead, the Applicant requested a finding from this Committee that any local ordinance or plan that would require underground construction of the Project was "unreasonably restrictive and [that] compliance therewith is not feasible in view of technology available" pursuant to A.R.S. § 40-360.06(D).

9. The City and Underground Arizona disagree that a finding of fact pursuant to A.R.S. § 40-360.06(D) is necessary and believe that it is feasible to construct the Project consistent with local ordinances and plans with the technology available and those local ordinances are not unreasonably restrictive. The Parties have reserved and asserted all rights to judicial relief on this issue.

10. However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground "is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or parent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

11. A.R.S. § 40-360.06(D) provides that "[w]hen it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to

whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue." The City of Tucson was provided notice and made a party to the proceedings under this provision and was provided an opportunity to respond.

12. The Project aids TEP and the state in meeting the need for an adequate, economical, and reliable supply of electric power without negatively affecting the southwestern electric grid.

13. When constructed in compliance with the conditions imposed in this Certificate, the Project aids the state, preserving a safe and reliable electric transmission system.

14. During the course of the hearing, the Committee considered evidence on the environmental compatibility of the Project as required by A.R.S. § 40-360 *et seq*. In doing so, the Committee determined that it was in the public interest to adopt Preferred Routes B and 4, and Alternatives D, 1, and 1.2, which are the final approved routes shown in **Exhibit B**.

15. The Project and the conditions placed on the Project in this Certificate effectively minimize the impact of the Project on the environment and ecology of the state.

16. The conditions placed on the Project of this Certificate resolve matters concerning balancing the need for the Project with its impact on the environment and ecology of the state arising during the course of the proceedings, and, as such, serve as finding and conclusions on such matters.

17. The Project is in the public interest because the Project's contribution to meeting the need for an adequate, economical, and reliable supply of electric power outweighs the minimized impact of the Project on the environment and ecology of the state.

18. The Project substation is not jurisdictional because the definition of a "transmission line" under A.R.S. § 40-360(10) only includes "new switchyards to be used therewith," not substations.

DATED this 29th day of July, 2024.

THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

By: _____
Adam Stafford, Chairman

CERTIFICATION OF MAILING

Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 26 copies were filed this 29th day of July, 2024 with:

Utilities Division – Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPIES of the foregoing mailed this 29th day of July, 2024 to:

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Chief Counsel/Division Director
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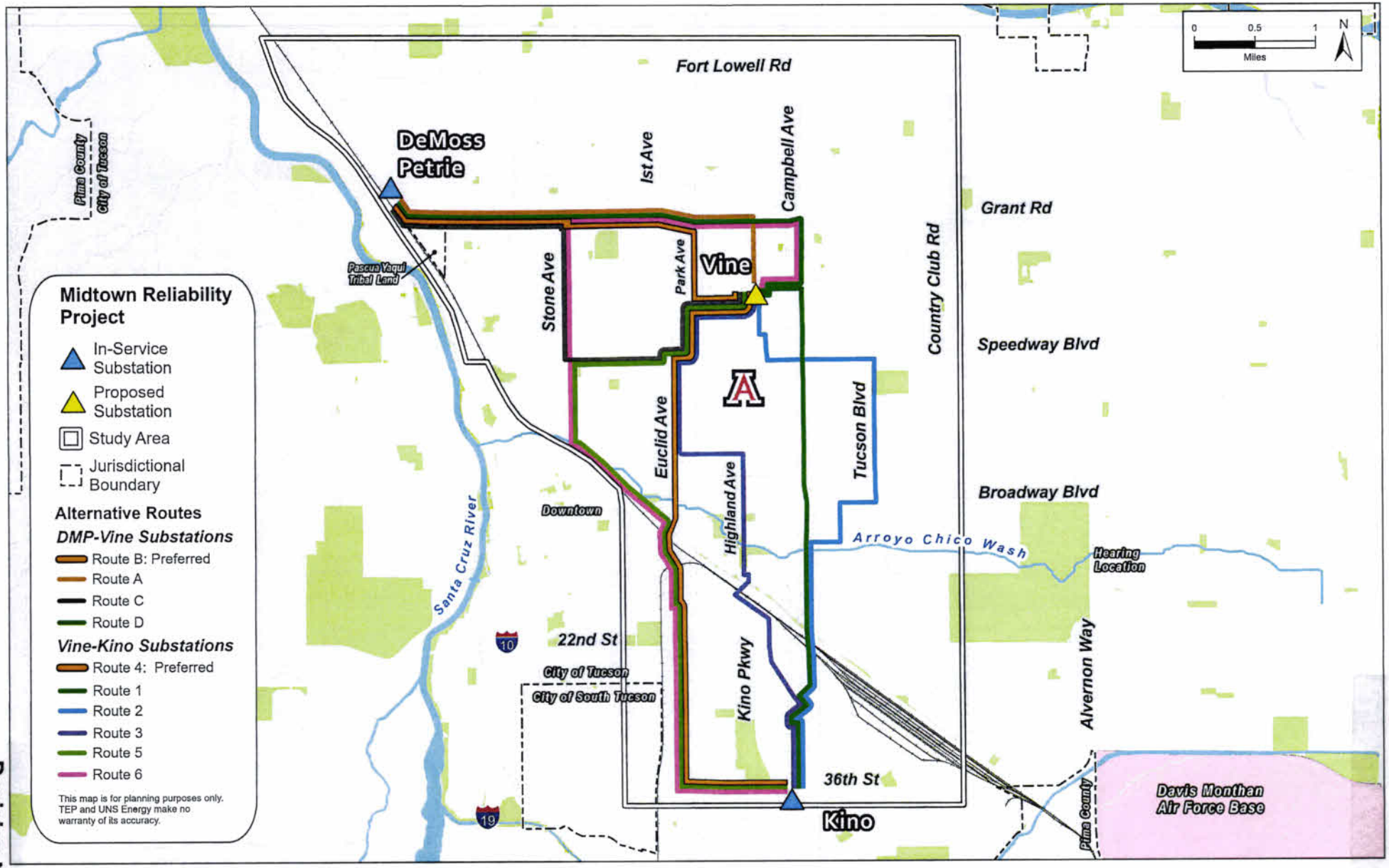
Attorney for Pima County

CEC 232

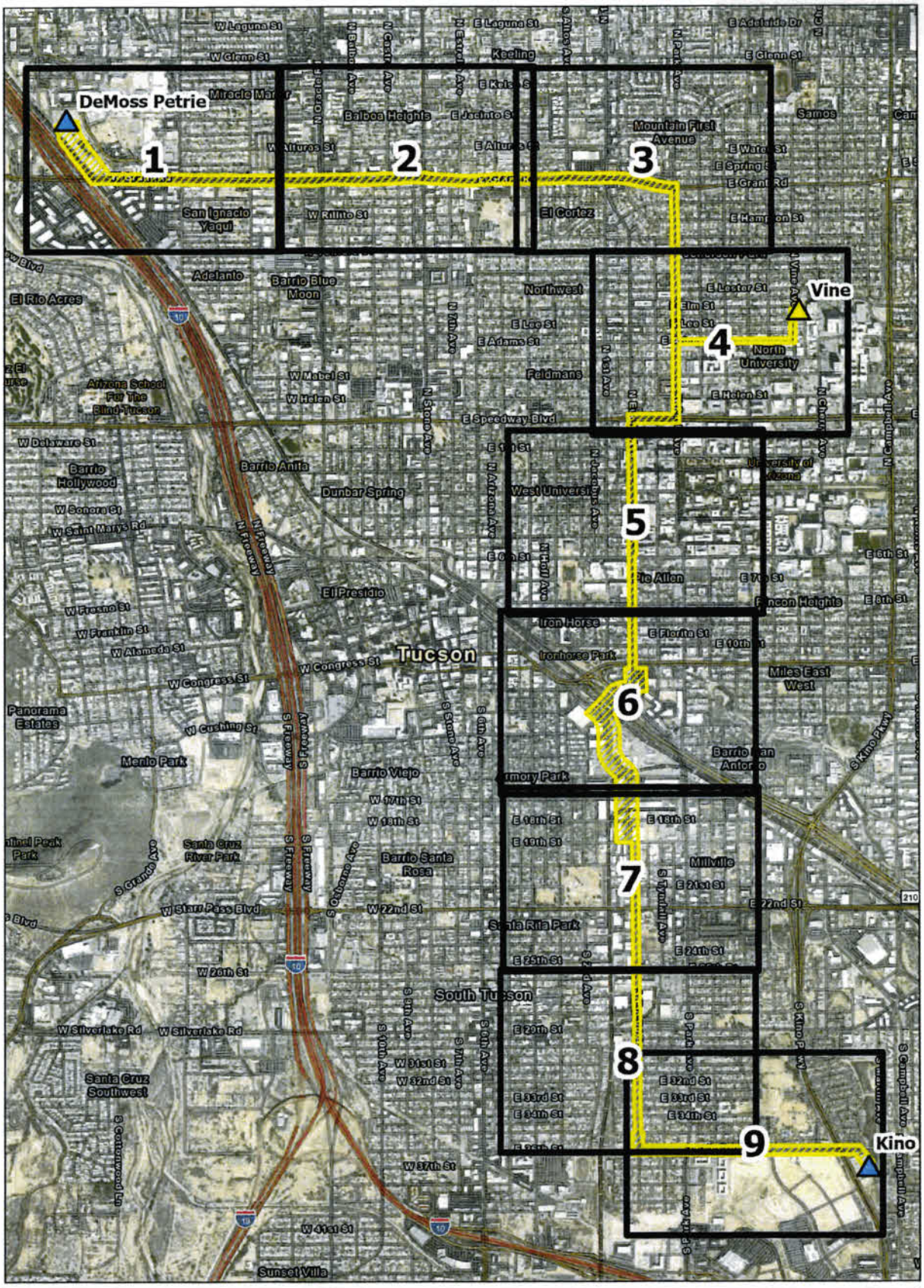
Exhibit A



Decision No. 79550

L-00000C-24-0118-00232

Exhibit B



Midtown Reliability Project

Route Alternative B4 Overview

In-Service 138kV Substation

Proposed 138kV Substation

Proposed Reduced Corridor

Map Index

0 950 1,900

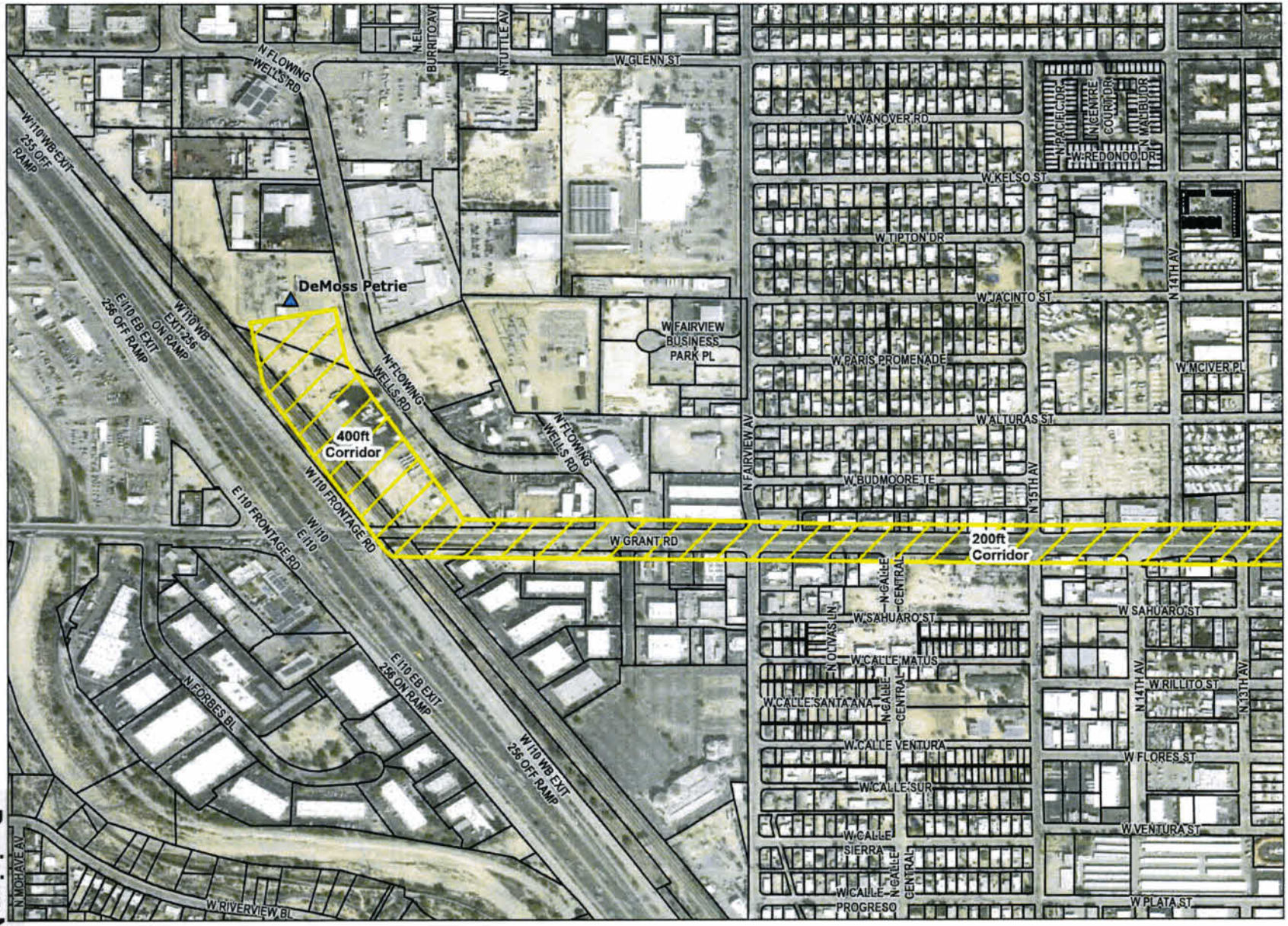
200 Feet = 1 Inch

TEP Tucson Electric Power
Land Resources

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

7/11/2024 Arizona



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

- In-Service 138kV Substation
- Proposed Reduced Corridor
- Pima Parcels

Page 1 of 9

0 250 500
Feet

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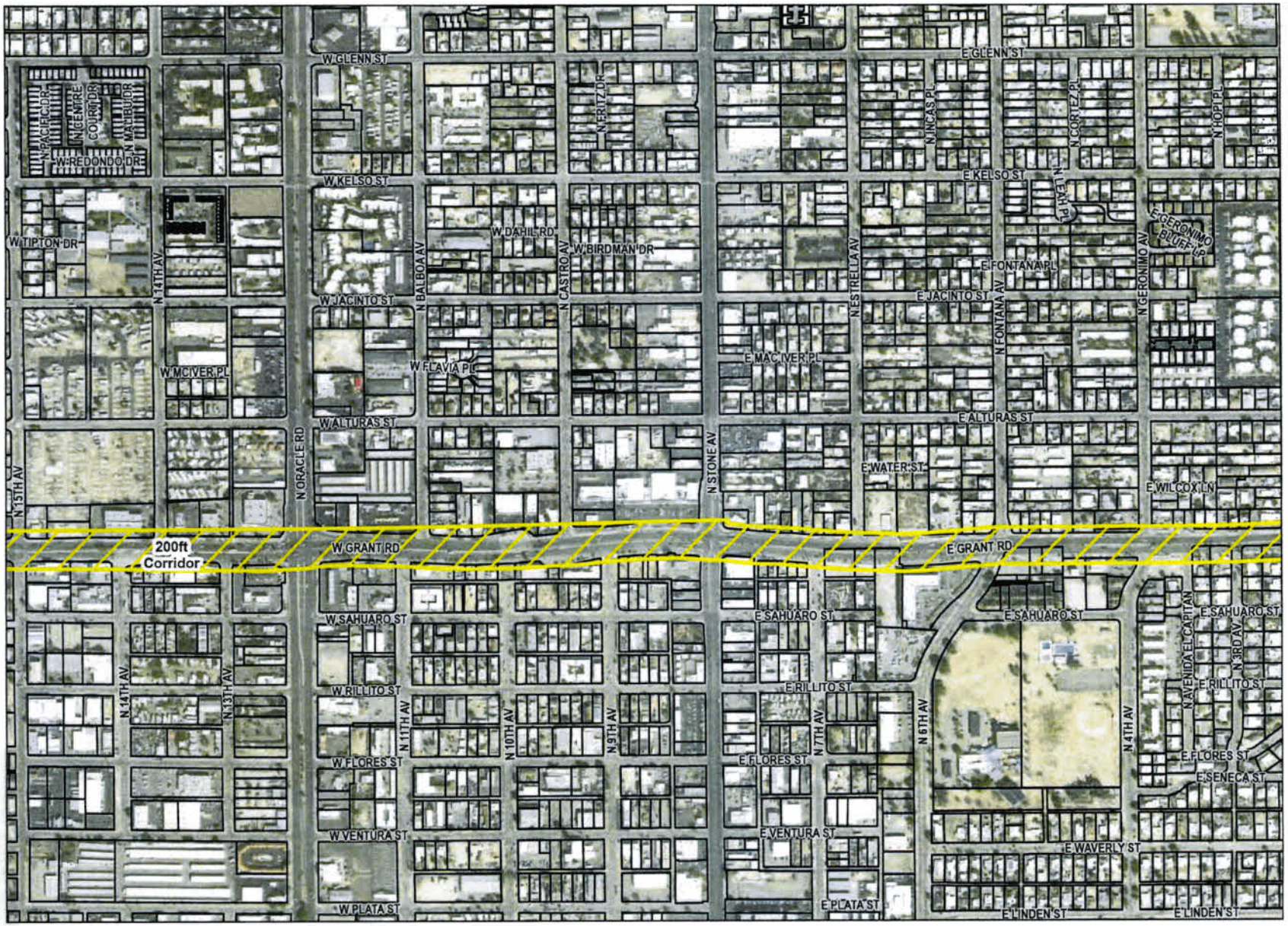
Decision No. 79550



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

Page 2 of 9

0 250 500
Feet

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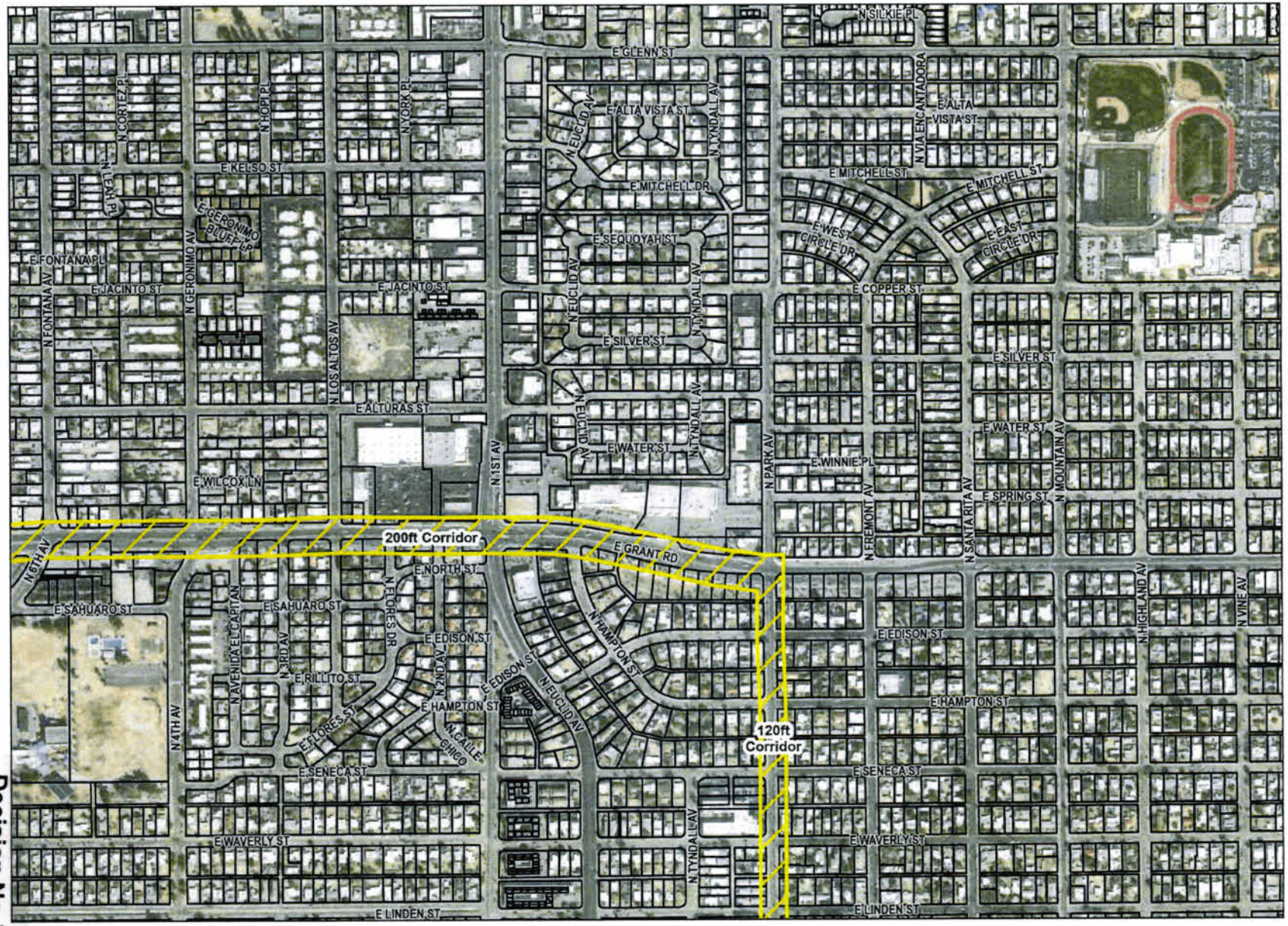

Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

Page 3 of 9

0 250 500
Feet

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Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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TEP
Tucson Electric Power
Land Resources
Midtown
Reliability Project
Route Alternative B4
Proposed 138kV Substation
Proposed Reduced Corridor
Pima Parcels
Page 4 of 9
N
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250
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Feet
Sources: Esri, UNS, TEP, BLM, and other GIS User Community
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.
Vine
100ft Corridor
120ft Corridor
200ft Corridor
N VINE AV
N MOUNTAIN AV
N HIGHLAND AV
N FREMONT AV
N PARK AV
N 1ST AV
N 2ND AV
N EUCLID AV
N TYNDALL AV
N MARTIN AV
N WARREN AV
N CHERRY AV
N RINCON AV
N SANTA RITA AV
N JACOBUS AV
N BEAN AV
E SENECA ST
E WAVERLY ST
E LINDEN ST
E LESTER ST
E CHAUNCEY LN
E ELM ST
E LEE ST
E ADAMS ST
E DRACHMAN ST
E MABEL ST
E HELEN ST
E SPEEDWAY BL
N RING RD
N PALM RD
N OLIVE RD
E 1ST ST
E 2ND ST

TEP
Tucson Electric Power
Local Resources
Midtown
Reliability Project
Route Alternative B4
Proposed Reduced Corridor
Pima Parcels
Page 5 of 9
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Feet
Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
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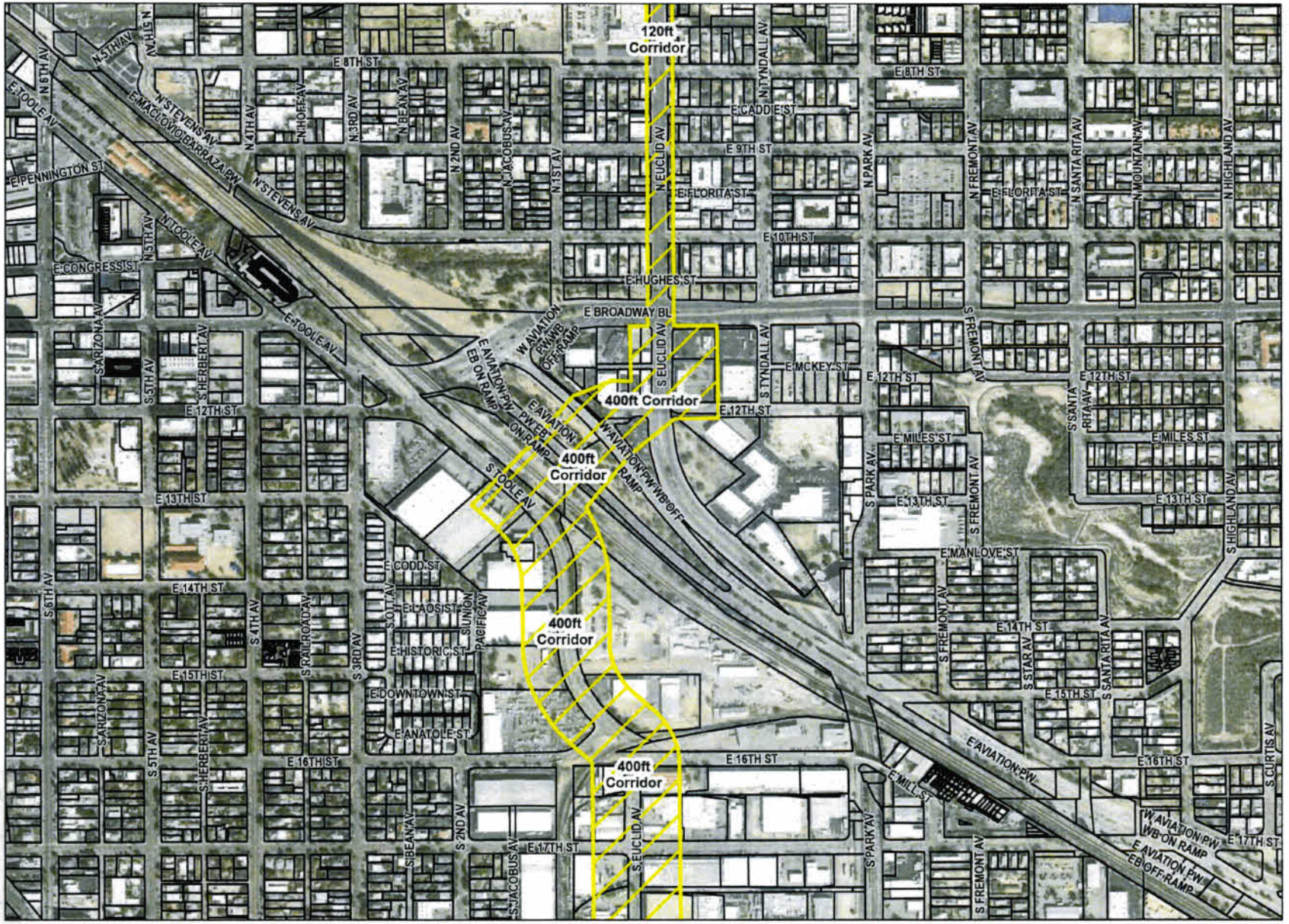
120ft Corridor
200ft Corridor
120ft Corridor
120ft Corridor
E SPEEDWAY BL
N EUCLID AV
E 6TH ST
N PARK AV
E 4TH ST
N TYNDALL AV
E UNIVERSITY BL
E 1ST ST
E 2ND ST
E 4TH ST
E 5TH ST
E 7TH ST
E 8TH ST
E 9TH ST
N 1ST AV
N 2ND AV
N 3RD AV
N 4TH AV
N 5TH AV
N 6TH AV
N HOPE AV
N HERBERT AV
N BEAN AV
N JACOBUS AV
N ARIZONA AV
E BABCOCK DR
E HARVILL DR
N MOUNTAIN AV
N PALM RD
N OLIVE RD
E JAMES E ROGERS WY
E SOUTH CAMPUS DR
N SANTA RITA AV
N HIGHLAND AV
N MOUNTAIN AV
N FREMONT AV
E FLORIDA ST
E CADDE ST
N STEVENS AV
E MAGUOYO BARRAZA PKWY
N TOOLE AV
N SANTA RITA AV



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

Page 6 of 9

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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Decision No. 79550

L-00000C-24-0118-00232

TEP
Tucson Electric Power
Land Resources
Midtown
Reliability Project
Route Alternative B4
Proposed Reduced Corridor
Pima Parcels
Page 7 of 9
N
0
250
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Feet
Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
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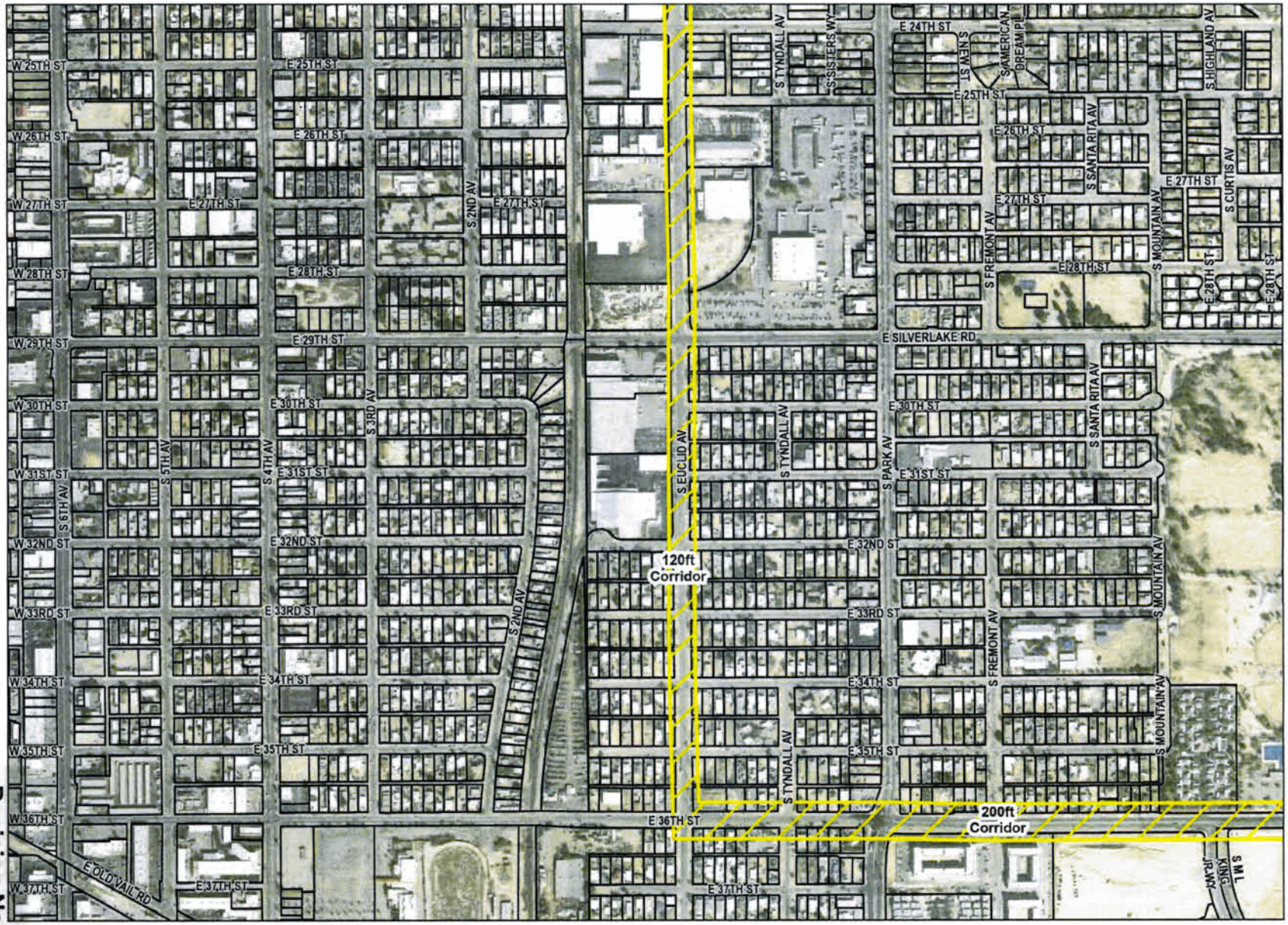
400ft Corridor
120ft Corridor
E 16TH ST
E 17TH ST
E 18TH ST
E 19TH ST
E 20TH ST
E 21ST ST
E 22ND ST
E 23RD ST
E 24TH ST
E 25TH ST
E 26TH ST
E 27TH ST
W 20TH ST
W 21ST ST
W 22ND ST
W 23RD ST
W 24TH ST
W 25TH ST
W 26TH ST
S CURTIS AV
S HIGHLAND AV
S MOUNTAIN AV
S SANTA RITA AV
S FREMONT AV
S PARK AV
S EUCLID AV
S TYNDALL AV
S 2ND AV
S 3RD AV
S 4TH AV
S 5TH AV
S 6TH AV
S ARIZONA AV
S HERBERT AV
S RAILROAD AV
S JACOBUS AV
S BEAN AV
E AVIATION PW
W AVIATION PW
E AVIATION PW EB OFF-RAMP
W AVIATION PW WB ON RAMP
E WAREHOUSE AV
E MILL ST
S STAR AV
S SANTA RITA AV
S TOOLE AV
E AVATOLE ST
E 22ND ST EB OFF-RAMP
W 22ND ST WB ON RAMP
S SISTERS WAY
S AMERICAN DREAM PL
S NEW ST



TEP Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

Page 8 of 9

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
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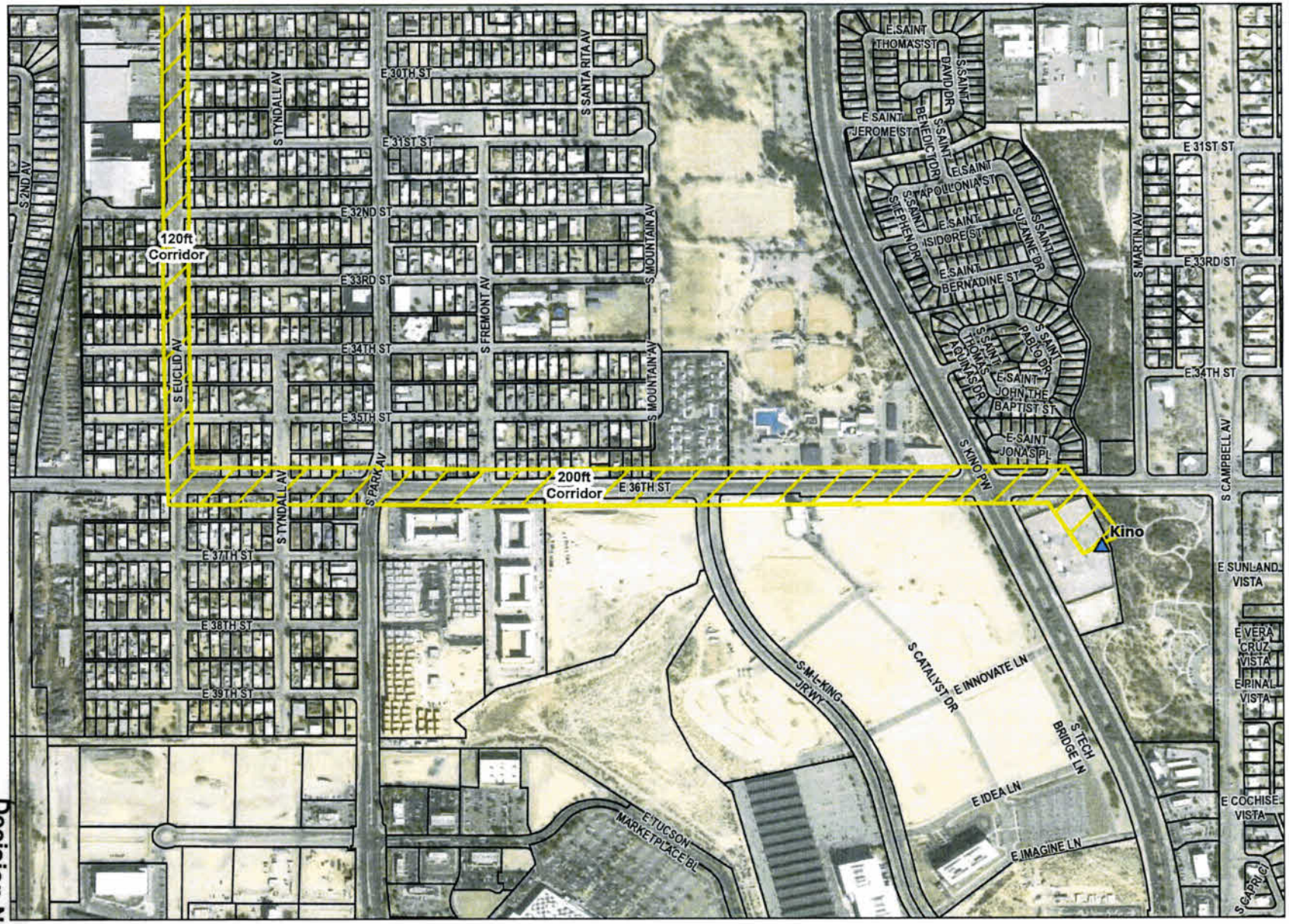
Decision No. 79550



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

- In-Service 138kV Substation
- Proposed Reduced Corridor
- Pima Parcels

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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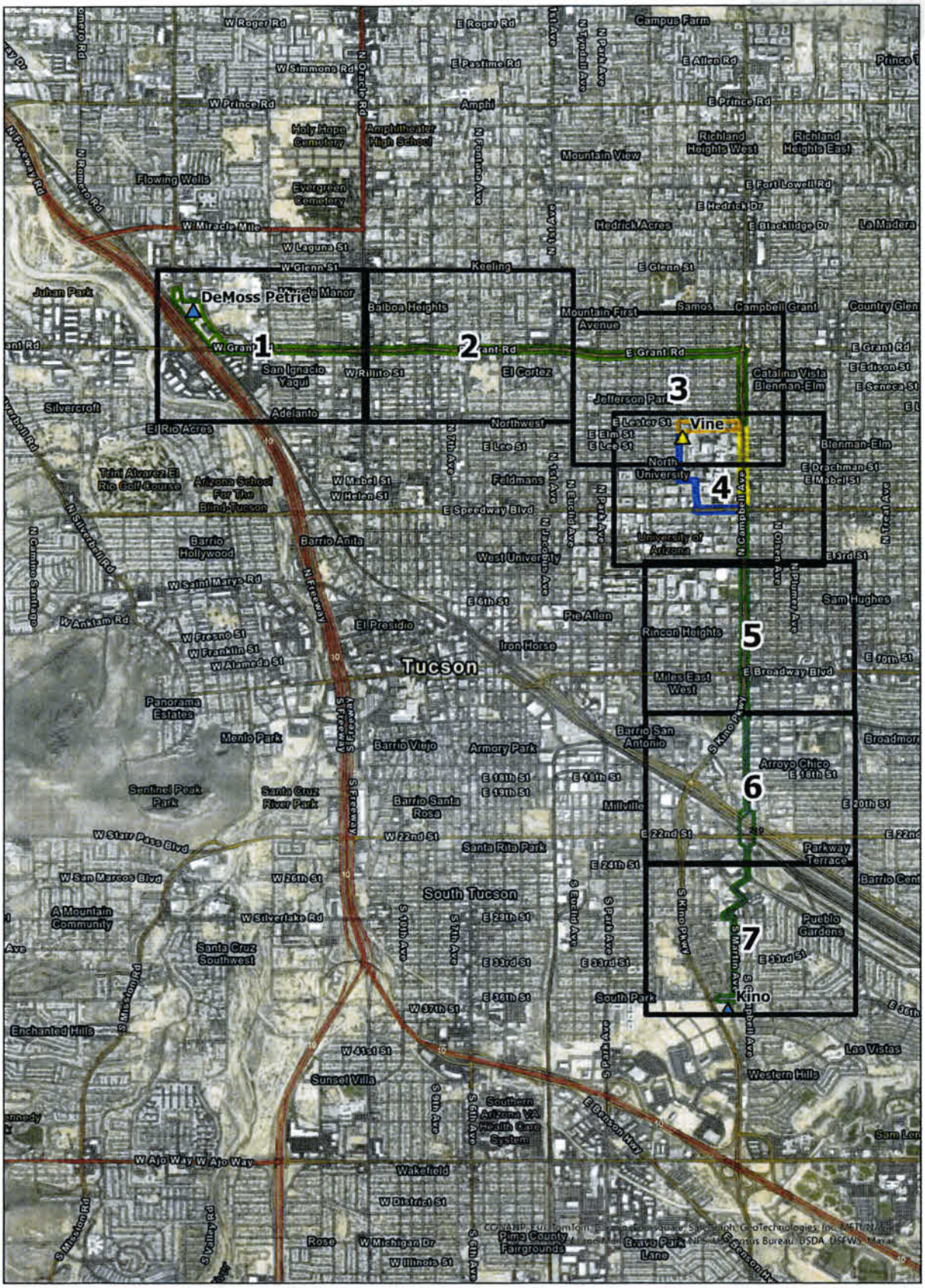

Midtown Reliability Project

Alternative Routes D, 1, 1.2

In-Service 138kV Substation
Proposed 138kV Substation
Map Index
Route 1
Route 1.2
Route D
Route D and 1
Route 1 and 1.2

0 2,000 4,000
Feet

TEP Tucson Electric Power
Land Resources

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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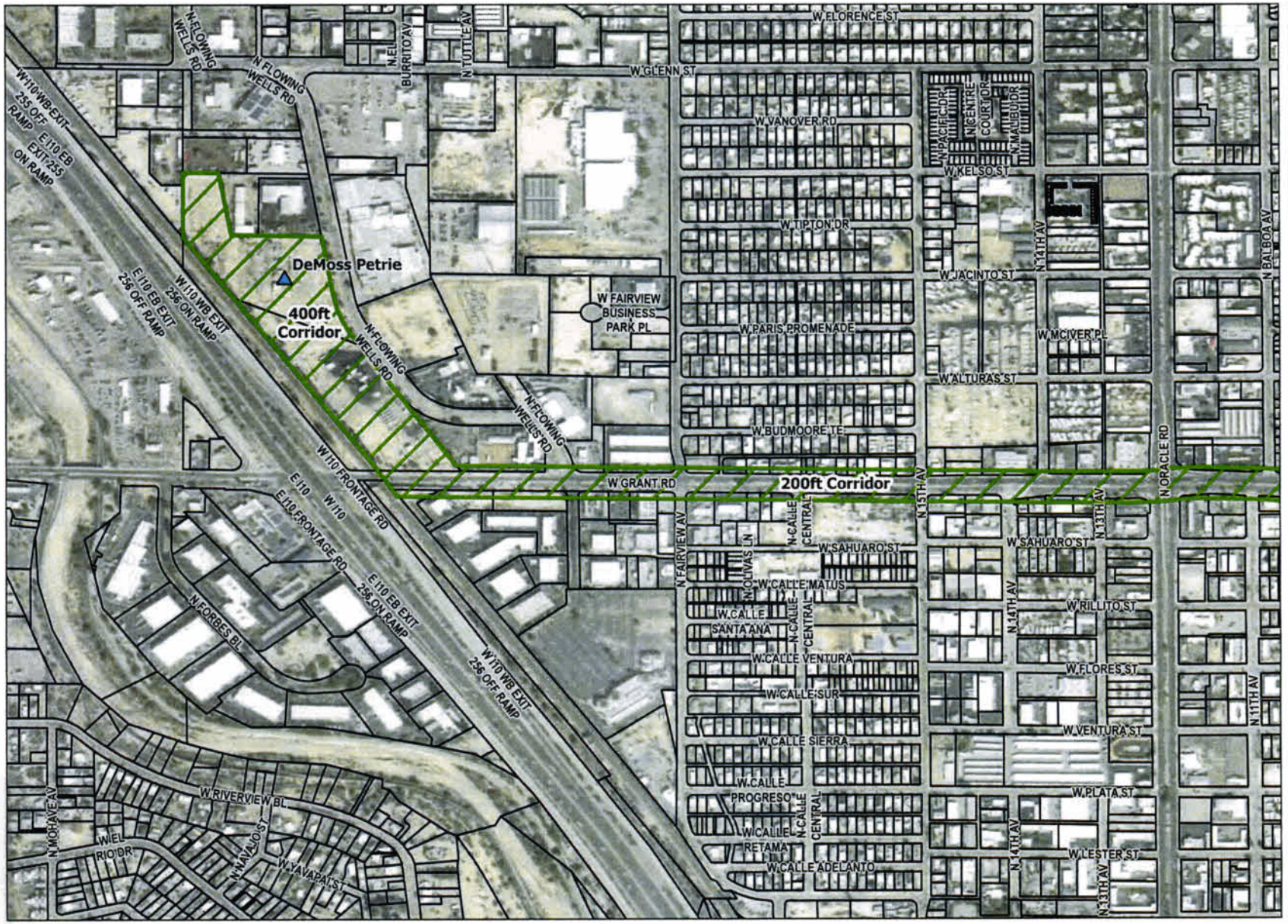

TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Alternative Routes D, 1, 1.2

In-Service 138kV Substation

Route D

Pima Parcels

Page 1 of 7

N

0 250 500

Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
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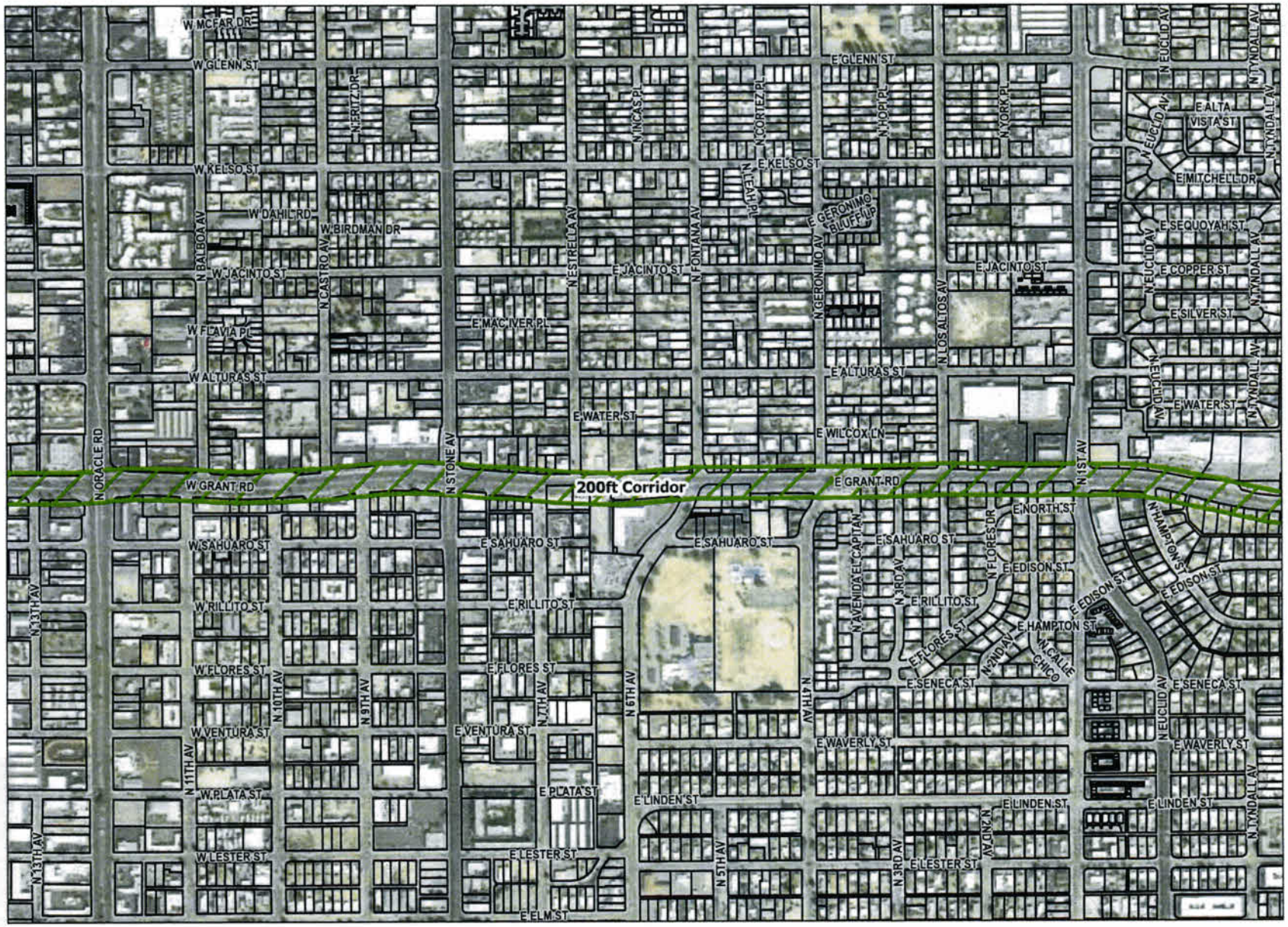
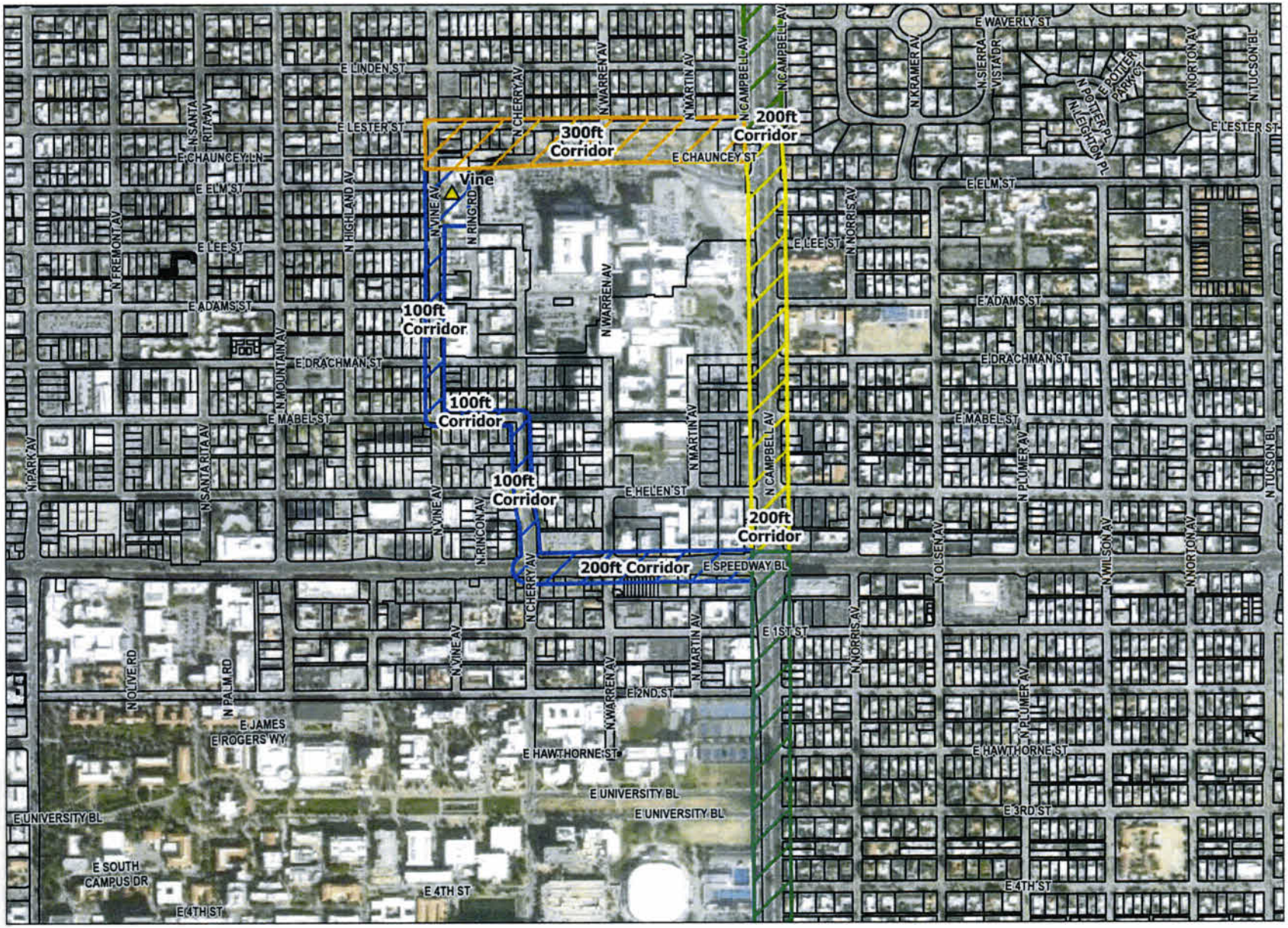


Tucson Electric Power
Land Resources

Midtown Reliability Project

Alternative Routes D, 1, 1.2

TEP
Tucson Electric Power
Midtown
Reliability Project
Alternative Routes
D, 1, 1.2
Proposed 138kV Substation
Route 1
Route 1.2
Route D
Route D and 1
Pima Parcels
Page 3 of 7
0
250
500
Feet
Sources: Esri, UNS, TEP, BLM, Pima County, GBIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy
200ft Corridor
300ft Corridor
100ft Corridor
Vine
E GRANT RD
N CAMPBELL AV
E CHAUNCEY ST
N CHERRY AV
N WARREN AV
N VINE AV
N RING RD
N HIGHLAND AV
N MOUNTAIN AV
N SANTA RITA AV
N FREMONT AV
N PARK AV
N EUCLID AV
N TYNDALL AV
E HAMPTON ST
E EDISON ST
E WAVERLY ST
E LINDEN ST
E LESTER ST
E ELM ST
E LEE ST
E ADAMS ST
E DRACHMAN ST
N PLUMER AV
N OLSEN AV
N NORRIS AV
N KRAMER AV
N SIERRA VISTA DR
E JUANITA ST
E SENECA ST
E WINNIE PL
E COPPER ST
E SILVER ST
E WATER ST
E SPRING ST
E ALTURAS ST



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Alternative Routes D, 1, 1.2

- Proposed 138kV Substation
- Route 1
- Route 1.2
- Route D
- Route D and 1
- Route 1 and 1.2
- Pima Parcels

Page 4 of 7

N

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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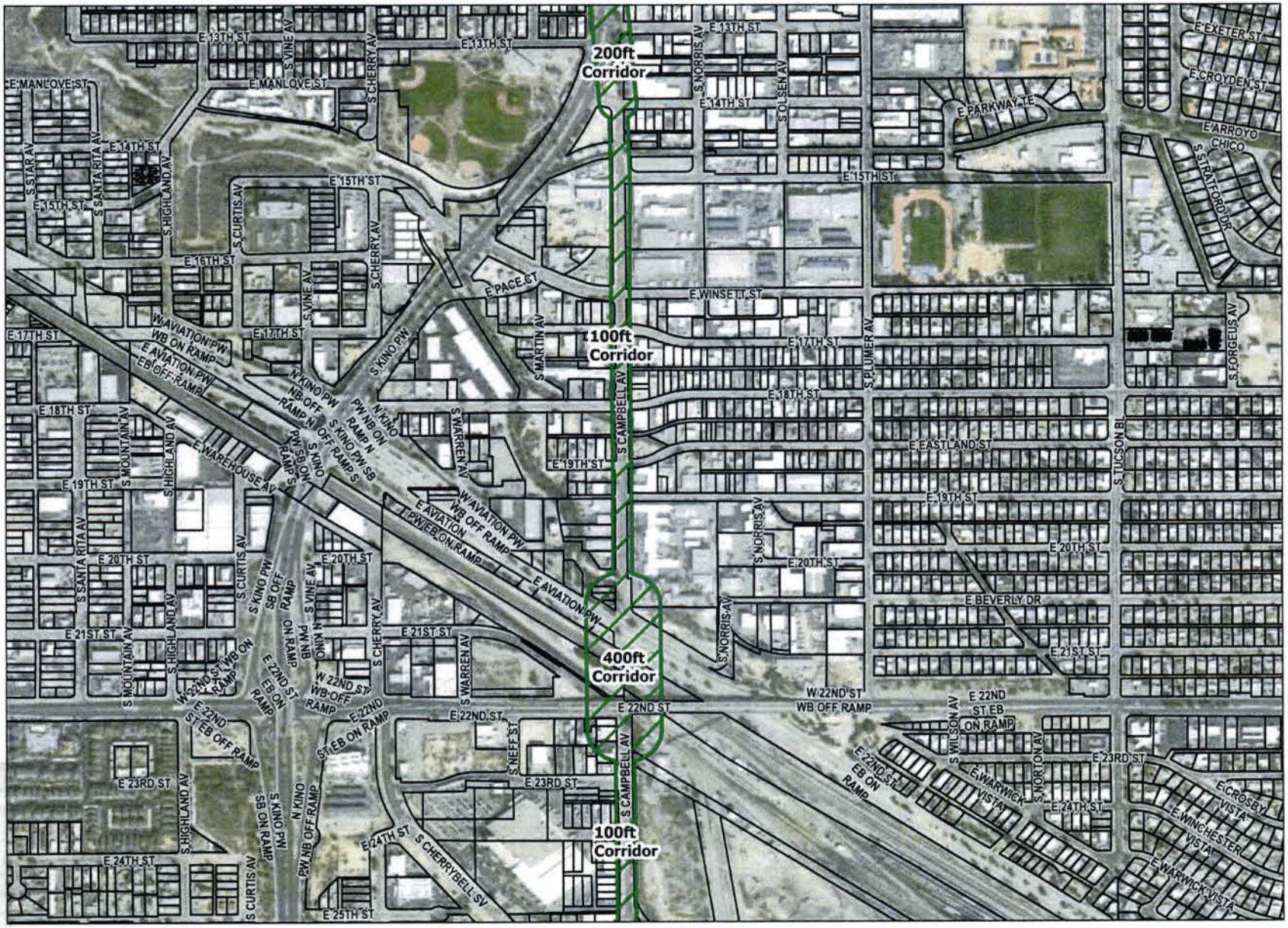
Decision No. 79550

L-00000C-24-0118-00232

TEP
Tucson Electric Power
Unisource Resources
Midtown
Reliability Project
Alternative Routes
D, 1, 1.2
Route 1 and 1.2
Pima Parcels
Page 5 of 7
0 250 500
Feet
Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.
200ft Corridor
100ft Corridor
E UNIVERSITY BL
N CHERRY AV
N VINE AV
E 4TH ST
N SANTA RITA AV
E FLORITA ST
E 6TH ST
E 7TH ST
E 9TH ST
E 10TH ST
E 12TH ST
E 13TH ST
E MANLOVE ST
E BROADWAY BL
S KINO PW
S TUCSON BL
E 19TH ST
E 14TH ST



Midtown Reliability Project

Alternative Routes D, 1, 1.2

Route 1 and 1.2

Pima Parcels

0 250 500

Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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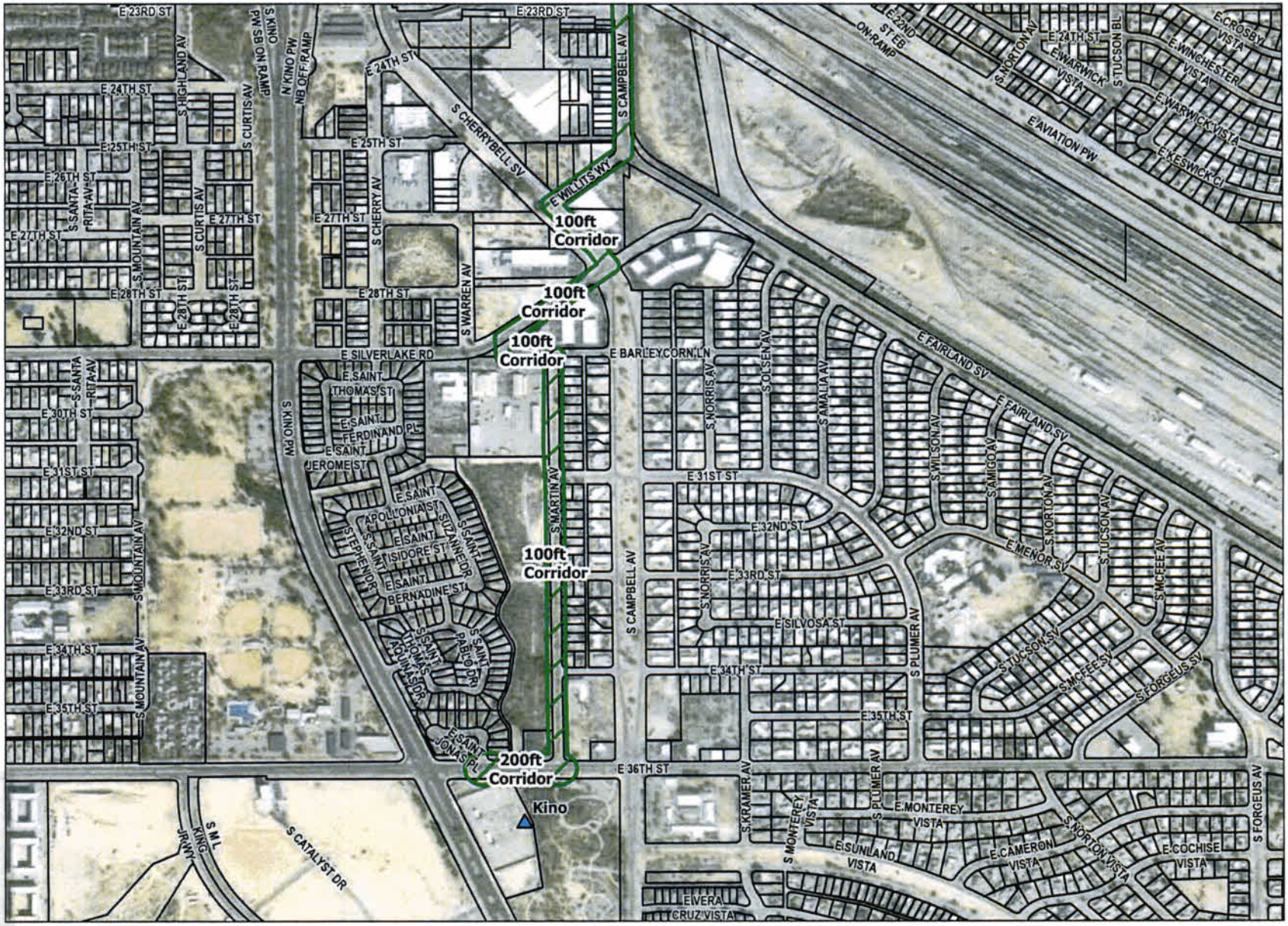

TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Alternative Routes D, 1, 1.2

In-Service 138kV Substation

Route 1 and 1.2

Pima Parcels

Page 7 of 7

0 250 500
Feet

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Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

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Decision No. 79550

L-00000C-24-0118-00232

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM O'CONNOR
Chairman
LEA MÁRQUEZ PETERSON
Commissioner
ANNA TOVAR
Commissioner
KEVIN THOMPSON
Commissioner
NICK MYERS
Commissioner

IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE.	DOCKET NO. ALS-00000A-22-0320 DECISION NO. 79140 ORDER

Open Meeting
September 21, 2023
Phoenix, Arizona

FINDINGS OF FACT

1. On December 23, 2023, Arizona Corporation Commission ("Commission") Chairwoman Márquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee").

2. On January 5, 2023, Chairwoman Márquez Peterson docketed a letter and notice of inquiry seeking feedback on a potential policy statement.

3. On February 8, 2023, Arizona Electric Power Cooperative, Inc., ("AEPCO") Salt River Project Agricultural Improvement and Power District ("SRP"), Tucson Electric Power Company ("TEP"), and UNS Electric, Inc. ("UNSE") (collectively, "Affected Utilities") filed joint Comments in this docket.

4. On February 16, 2023, Arizona Public Service Company filed a Response in this docket.

5. On February 20, 2023, the Affected Utilities filed joint Comments in this docket.

6. On March 14, 2023, Strata Clean Energy filed Comments in this docket.

7. On March 30, 2023, AEPCO, TEP, and UNSE filed joint Comments in this docket.

8. On May 5, 2023, Commissioner Myers docketed a letter requesting that Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals for potential policy statements detailed in Commissioner Myers' letter.

9. On June 6, 2023, Southwestern Power Group filed a Response in this docket.

10. On June 14, 2023, Staff and the Legal Division filed their Response to Commissioner Myers' letter.

11. On June 19, 2023, SRP filed Comments in this docket.

12. On June 27, 2023, TEP and UNSE filed a joint Response in this docket.

13. On August 9, 2023, the proposals contained in Commissioner Myers' letter were discussed and considered at the Staff Open Meeting.

14. At the August 9, 2023, Staff Open Meeting, the Legal Division was directed to prepare a policy statement addressing proposals one and two in Commissioner Myers' letter concerning substations and hybrid hearings.

15. Attached to this Order as Attachment A is the Legal Division's recommendation for the Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee for Commission consideration. We adopt Legal Division's recommendation; however, the Commission's Policy Statement shall also include the following policy statement:

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines

> underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 *et. seq.*

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter in this proceeding pursuant to Titles 40 and 41 of the Arizona Revised Statutes.

2. The Commission, having reviewed Attachment A and the record herein, concludes that it is just and reasonable and in the public interest to adopt the policy statement reflected in Attachment A, as modified herein.

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ORDER

IT IS THEREFORE ORDERED that the policy statement reflected in Attachment A, Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee, is adopted as modified herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN O'CONNOR COMMISSIONER MARQUEZ PETERSON

DISSENT

COMMISSIONER TOVAR COMMISSIONER THOMPSON COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 4th day of October, 2023.

DOUGLAS R. CLARK
EXECUTIVE DIRECTOR

DISSENT: Anna Tovar

DISSENT: _____

ATTACHMENT A

ARIZONA CORPORATION COMMISSION POLICY STATEMENT[1] REGARDING PRACTICE AND PROCEDURE BEFORE THE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

Background

Before constructing a plant or transmission line in this state, Arizona law requires that utilities receive a Certificate of Environmental Compatibility ("CEC") from the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee") and approved by the Arizona Corporation Commission ("Commission"). The process for obtaining a CEC is governed by the line siting statutes, Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* Prior to this year, the line siting statutes had not been updated since their adoption in 1971.

The outdated nature of the statutes, coupled with the increased need for power in the Southwest and Arizona specifically, has dramatically increased the number of CEC applications that have come before the Line Siting Committee. The Committee, Commission, and Arizona Legislature have taken numerous steps to address the backlog of applications pending before the Committee.

On December 23, 2022, Chairwoman Márquez Peterson's Office opened this docket to consider the adoption of substantive policy statements to provide guidance to the Line Siting Committee and regulated entities regarding when a CEC is required. The docket has generated valuable discussion and proposals from Commissioners and regulated entities alike.

On April 5, 2023, House Bill 2496 was signed into law by the Governor. That bill amends the definition of "transmission line" to clarify that "transmission line" means:

> five or more new structures that span more than one mile in length as measured from the first structure outside of the substation, switchyard or generating site to which the line connects to the fifth structure and that are erected above ground and support one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more and all new switchyards to be used therewith and related thereto for which expenditures or financial commitments for land acquisition, materials, construction or engineering exceeding $50,000 have not been made before August 13, 1971. Transmission line does not include structures located on the substation, switchyard or generating site to which the line connects.

[1] This substantive policy statement is 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 or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

This updated definition of "transmission line" addresses much of the ambiguity identified in the generic docket concerning when a CEC is required.

In addition, on March 6, 2023, the Commission's Legal Division opened Docket No. ALS-00000A-23-0063 for purposes of its 5-Year-Review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee, Arizona Administrative Code Title 14, Chapter 3, Article 2. On August 25, 2023, the Commission issued Decision No. 79083, directing the Legal Division to open a new rulemaking docket to update the line siting rules. Accordingly, revisions to the line siting rules will be addressed in that docket.

In order to provide additional guidance regarding the Commission's interpretation of the requirements under the line siting statutes, it is reasonable and appropriate to adopt the policy statements set forth herein. Policy Statement No. 1 addresses the Commission's interpretation of "transmission line," as updated in House Bill 2496. Policy Statement No. 2 provides the Commission's preferred approach to conducting hearings before the Line Siting Committee.

Policy Statements

1. The definition of "transmission line" provided in A.R.S. § 40-360, and as amended by House Bill 2496, includes "switchyards," but notably does not include "substations." The Commission presumes the Legislature intentionally excluded "substations" from the definition of "transmission line" and therefore interprets A.R.S. § 40-360 as imposing no requirement for a utility to obtain a CEC to construct a substation.

2. The line siting statutes require that a hearing be held on an application "in the general area within which the proposed plant or transmission line is to be located or at the state capitol at Phoenix," as determined by the Chairman of the Committee. A.R.S. § 40-360.04(A). Since the COVID-19 pandemic, the Committee has authorized virtual or hybrid virtual and in-person hearings. The Commission affirms the Committee's use of hybrid hearings and encourages the continued use of hybrid hearings to streamline the hearing process and allow for more robust public participation at Line Siting Committee hearings.

Attachment 2

ORIGINAL

E000024350

OSBORN MALEDON
ATTORNEYS AT LAW

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February 20, 2023

Re: In the Matter of Substantive Policy Statements to Guide the Arizona Power Plant and Transmission Line Siting Committee (ALS-00000A-22-0320)

Arizona Corporation Commissioners
Members of the Arizona Power Plant
and Transmission Line Siting Committee and
All Interested Stakeholders:

Arizona Electric Power Cooperative, Inc., Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, and UNS Electric, Inc. (collectively "Affected Utilities") reiterate our thanks to Commissioner Marquez Peterson for opening this docket and raising important issues regarding the Arizona power plant and line siting process. As stated in the January 17, 2023 letter filed in this docket, the Affected Utilities support efforts to clarify and modernize the Arizona Power Plant and Transmission Line Siting Committee's ("Committee") rules and procedures. Among other things, the Affected Utilities are concerned with the current Committee backlog, which results primarily from the exceptionally large number of generation interconnection "tie-line" applications now being filed. At present, the backlog is such that applicants for a CEC cannot get a hearing scheduled until the end of 2024. That reality is highly concerning to our companies because it has the potential to hinder our respective abilities to get needed projects approved and on-line when required to serve our customers and members in Arizona.

Moreover, as Commissioner Marquez Peterson points out, the process for obtaining a certificate of environmental compatibility ("CEC") is complex and costly. Indeed, an applicant for a CEC typically must retain consultants to help prepare the environmental and other impact studies required by Arizona law to accompany a CEC Application, as well as attorneys to help facilitate the hearing process. In addition, the Committee is required by law to hold a hearing in the county in which the transmission line will be constructed, which is often in rural or remote areas of the State. The responsibility for securing and funding both a hearing venue of adequate size and hotel accommodations for Committee members, attorneys, witnesses, and other participants in the process falls on the applicant. The applicant must also fund an audio-visual team to provide internet and virtual hearing capabilities, as well as ensure that the room will be equipped with sufficient tables, chairs, and other amenities for all participants. Hearings are always scheduled to begin in the afternoon on the first day to give Committee members who reside far from the hearing location time to get there, which means that the hearing itself typically lasts a minimum of two days, even for the least controversial of applications. For this and other reasons, it is not unusual for the total cost of the CEC application process to exceed $250-300,000 for the most basic of applications, rising to in excess of $650,000 and much higher as the proceedings become increasingly complex. For the Affected Utilities, that amount ends up being recovered in rates paid by our customers and members.

ACC - Docket Control - Received 2/20/2023 10:05 AM
ACC - Docket Control - Docketed 2/21/2023 8:24 AM

The Affected Utilities understand the need for this process for most projects. Such an extensive evaluation is important for significant projects that must be fully vetted to ensure their compatibility with the environment and ecology of Arizona. But it should not be required for smaller projects that, by their nature, have little to no environmental footprint. We recognize that the Legislature may be taking steps to remedy this concern. However, we also agree with Commissioner Marquez Peterson that any legislative solution will take several months to implement if it passes at all, and that a more urgent, Commission-driven solution is needed.

The Affected Utilities therefore offer the following suggestions for the Commission's potential inclusion in a substantive policy statement:

(1) Interpret "series of structures" to mean "three or more" poles, but exclude from the series any poles located on the site of existing energy infrastructure.

An important first step, as suggested in the Draft Potential Substantive Policy Statement No. 1, is to clarify what projects constitute a "transmission line" within the meaning of A.R.S. § 40-360(10) – specifically, what constitutes "a series of new structures."[1] As a legal matter, no caselaw exists regarding how many poles constitute a "series" in the line siting context. However, the Arizona Court of Appeals has interpreted the meaning of the word "series" in the criminal context (examining the phrase "continuing series of violations") as meaning three or more.[2] In doing so, the Court relied on the definition of "series" contained in Webster's Third New International Dictionary (1966): "a group of *usually three or more* things or events standing or succeeding in order and having a like relationship to each other."[3] Notably, that version of Webster's dictionary was published close in time to the promulgation of the line siting statutes in 1971, thus indicating that the common and approved use of "series" at that time constituted "three or more."[4]

This interpretation is also consistent with how the phrase "series of structures" has historically been interpreted by the Commission and the Committee. For example, during a 2021 pre-filing meeting, former line siting Chairman Thomas Chenal expressed his observation that "the Corporation Commission . . . has, at least traditionally, customarily thought of a series as

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[1] A.R.S. § 40-360.

[2] *State v. Tocco*, 156 Ariz. 110, 115 (App. 1986) (citing *United States v. Valenzuela*, 596 F.2d 1361, 1367 (9th Cir. 1979) ("[W]hile all dictionaries may not precisely specify the number of related, successive events which are necessary to constitute a series, we think the District Court's instruction that a series must consist of three or more federal narcotic law violations was squarely based on common usage.") (internal citations omitted)).

[3] *Id.* (emphasis added).

[4] *See* A.R.S. § 1-213 (requiring that statutory "[w]ords and phrases shall be construed according to the common and approved use of the language.")

being three or more."[5] The Commission has also opined that the construction of a substation and two transmission poles is **not** a "transmission" line that would trigger the need for a CEC.[6] This interpretation is also consistent with the Affected Utilities' historical understanding of the phrase.

However, absent from the definition of "transmission" line is any indication of what poles should be counted towards one of the series. Here, the Declaration of Policy underlying the siting statutes is instructive:

> The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**. It is recognized that such facilities cannot be built without in some way **affecting the physical environment where the facilities are located**. The legislature further finds that it is essential in the public interest **to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause**.[7]

Clearly, the original drafters of the line siting statutes were focused on balancing the impact of "major new facilities" – large but necessary energy infrastructure – with the existing physical environment. However, if the environment is already impacted by energy infrastructure (be it a switchyard, substation, or generation site), the construction of the new facilities would have no incremental adverse effect on the environment or anyone's quality of life, and those facilities should thus not be considered part of the "series" of new structures for which the environmental impact should be analyzed. This reading of the statute makes it more likely that only "major new facilities" will be required to file for a CEC, not small projects to be constructed on land that, at least in part, has already been impacted by energy infrastructure.

For the same reason, reconductoring a line or replacing old structures with new ones within the location approved by the Commission in the underlying CEC should not trigger the CEC process, because doing so does not have any new adverse impact on the environment as contemplated by the line siting statutes.

The Commission's policy should also make clear that the "series of structures" contemplated is linear in nature and that a CEC would not be required for the construction of, for example, two sets of two poles that feed into a substation or switchyard in a parallel or another non-linear fashion. Such a construction conforms to the commonly understood meaning of "series" (things that are "succeeding in order"[8]) would be consistent with the legislature's intent that only "major new facilities" should be subject to the siting process (not a handful of minor new facilities).

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[5] *See e.g.* Cielo Azul Prefiling Conference Transcript, June 17, 2021 (Chairman Chenal) at 25:16-19

[6] *See* Decision No. 77761 (October 2, 2020).

[7] *Declaration of Policy*, Laws of Arizona 1971, Chapter 67, p. 180 (emphasis added).

[8] *See State v. Tocco*, 156 Ariz. at 115.

Finally, the Commission should memorialize in policy its historical practice of not requiring a CEC for the construction of a substation. A.R.S. § 360(10) defines transmission line to mean, in relevant part, "a series of new structures erected above ground and supporting one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more **and all new switchyards** to be used therewith..." (emphasis added). While the statute requires a "switchyard" (which is part of the transmission system) to be sited as part of a transmission line, it makes no similar requirement for a substation. The Commission has acknowledged that substations do not need to go through the CEC process, *see* Decision No. 77761, and it makes sense to reflect that interpretation as part of any forthcoming policy.

(2) Establish a priority system for CEC hearings.

At present, the Committee Chair schedules hearings on a first-come, first-served basis. This practice worked fine when the Committee only handled a few CEC applications each year. However, the Committee is now scheduled to hear no fewer than 33 CEC applications in the next 18 months – and the pace of new applications is not slowing. To ensure that a project has a spot in the queue, the Affected Utilities must ask for hearings to be set years in advance. This process is unworkable, and there is no system in place to ensure that projects that need to be on-line sooner than the current scheduling process would allow will have a timely hearing. As a practical matter, the line siting statutes require the Committee to hold a hearing on an application within a specified timeframe after the application is filed.[9] A frustrated applicant, unable to work through the existing process, could just file an application with the Commission and the Committee will have to accommodate it, or the project could be built without any regulatory evaluation or approval.[10] Certainly, such an outcome is not in the public interest. The Commission should thus work with impacted stakeholders and the Committee Chair's office to develop a system for identifying and prioritizing more urgent projects.

(3) Make changes and provide guidance that will improve the CEC process for non-exempt projects.

Finally, the Commission should include in any policy the following recommendations that will improve the overall CEC process:

- The Affected Utilities are routinely asked by stakeholders to underground transmission facilities. As the Commission knows, undergrounding a transmission line can be ten to twenty times more expensive than building a line above ground. The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding.

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[9] *See* A.R.S. § 40-360.04.
[10] *See* A.R.S. § 40-360.08(B).

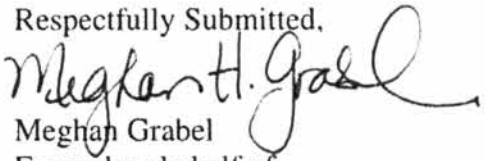
- A frequent issue in CEC proceedings is the efficacy of the applicant's public outreach process. The statutory outreach requirements are minimal, providing only for notice in a newspaper of general circulation and to certain affected jurisdictions. However, the Committee and the Commission often, and reasonably, expect more than that from applicants. Explaining what type of and how much public outreach the Commission expects of CEC applicants would be useful to ensure that all are on the same page as to what is required and that all reasonable expectations are met.

- Since the COVID-19 pandemic, CEC hearings have been conducted in a hybrid virtual/physical attendance platform. Given the remoteness of certain projects that require a CEC, the practice of allowing virtual participation has proven to be helpful to both the applicants and the Committee. The Commission should endorse the continuation of the hybrid platform for CEC hearings.

- CEC dockets are one of the two types of proceedings before the Commission that still require physical filings. Applicants are required to file 25 physical copies of a CEC application and all other documents that need to be filed during the course of the CEC proceeding (and then 13 hard copies for any documents to be filed after the CEC is awarded). Given the size of CEC applications, this requirement is both costly and environmentally unsound. The Commission should allow electronic filing in CEC dockets, with the understanding that if any Commissioner or Committee member wants a hard copy, they can reach out to the applicant through the Chairperson of the Committee and will receive one.

Again, we are grateful for Commissioner Marquez Peterson's attention to these matters and look forward to working with Chairman O'Connor and all of the Commissioners on the important issues raised in this docket.

Respectfully Submitted,



Meghan Grabel
For and on behalf of
Arizona Electric Power Cooperative, Inc.,
Salt River Project Agricultural Improvement and Power District,
Tucson Electric Power Company,
UNS Electric, Inc.

Attachment 3

ORIGINAL

E000027753

MEMORANDUM

TO: Docket Control

FROM: Douglas R. Clark
Interim Director
Utilities Division

Robin Mitchell
Director/Chief Counsel
Legal Division

DATE: June 14, 2023

RE: IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE. (DOCKET NO. ALS-00000A-22-0320)

SUBJECT: RESPONSE TO COMMISSIONER NICK MYERS' MAY 5 LETTER

On May 5, 2023, Arizona Corporation Commission ("Commission") Commissioner Nick Myers docketed a letter requesting Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals detailed in Commissioner Myers' letter. This memorandum represents Staff's and the Legal Division's joint response to the seven proposals. Staff and the Legal Division appreciate the opportunity to provide this response addressing recommendations regarding the backlog of Certificate of Environmental Compatibility ("CEC") applications with the Arizona Power Plant and Transmission Line Siting Committee ("Committee").

The responses below include a brief analysis from the Commission's Legal Division regarding whether the proposed changes can be adopted by Commission vote, substantive policy statement, rulemaking, or if a statutory change is required. Many of the proposals require revising existing rules, and therefore necessitate rulemaking.

Conveniently, the five-year review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee ("line siting rules") is taking place in Docket No. ALS-00000A-23-0063. Stakeholder comments regarding revisions to the line siting rules are due June 19, 2023. In that Docket, the Legal Division will prepare and submit to the Commission a Five-Year-Review Report, which will identify areas that could be improved in a subsequent rulemaking docket. While some of the recommendations in Commissioner Myers' letter may properly be adopted through a substantive policy statement, the Legal Division generally recommends adopting these changes through rulemaking rather than policy statements.

ACC - Docket Control - Received 6/14/2023 2:29 PM
ACC - Docket Control - Docketed 6/14/2023 2:48 PM

1. Substations

The first recommendation was to affirm that the construction of a substation does not require a CEC.

Arizona Revised Statutes ("A.R.S.") § 40-360(10) does not include "substation" as part of the definition of a "transmission line" but does include "switchyard."

For clarity, Staff suggests defining "switchyard" and "substation." A switchyard transmits high voltage power from generation plants to a utility's distribution system. On the other hand, a substation transforms high voltage power into lower voltages suitable for local distribution.[1]

Staff does not oppose clarifying that constructing a substation does not require a CEC; however, this clarification may not have any substantial impact to the number of applications coming before the Committee. Staff is not aware of any previous CEC applications only involving substations that would not have gone to a hearing due to the proposed clarification.[2]

It may be beneficial to seek input from the Line Siting Committee on the number of utilities that seek a CEC to construct only a substation and whether adopting a policy regarding substations would reduce the number of CEC applications that require a hearing.

Clarifying that constructing a substation does not require a CEC and/or that the definition of "transmission line" does *not* include substations would require the Commission to issue a substantive policy statement because the Commission would be informing the public of the agency's approach to or opinion of requirements under the line siting statutes.[3] The substantive policy statement could also include the Commission's approach to or opinion of what constitutes a "switchyard" and "substation," as recommended by Staff. However, these changes may be better addressed through rulemaking, which the Legal Division generally recommends.

2. Hybrid hearings

Staff understands why the Committee began conducting hybrid virtual/in-person hearings and has no issue with the Committee's decision to conduct hybrid virtual/in-person hearings.

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[1] In Case No. 186, Tucson Electric Power witness Edmond Beck provided a helpful discussion of the difference between substation and switchyard, noting that the legislature's use of only "switchyard" in the statute was likely deliberate because "[s]witchyards are required to interconnect transmission lines whereas substations are typically used for load serving purposes." Direct Testimony of Edmond Beck at 6, https://docket.images.azcc.gov/0000200968.pdf.

[2] *See Id.* (stating that "TEP's long-standing position has been to include information regarding substations but not request approval of them.").

[3] A substantive policy statement informs the public of the agency's approach to or opinion of the requirements under statutes and regulations, including the agency's "current practice, procedure or method of action based upon that approach or opinion." A.R.S. 41-1001(24). A substantive policy is advisory only. *Id.* It can only affect the internal procedures of the agency and cannot impose additional requirements or penalties on regulated parties. *Id.*

A.A.C. R14-3-201(A) provides the Committee with discretion to hold sessions at the time and place that the Committee's business may require. Accordingly, any directive from the Commission that the Committee *must* conduct hybrid hearings would require a change to the rules.[4]

3. Undergrounding transmission lines

The Legal Division cautions against setting policies that may constrain the Commission in exercising its discretion when setting rates. The facts of each case are unique, and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted. Importantly, the Commission has discretion to disallow investments that were not prudently incurred. Thus, the Commission can ensure ratepayers do not bear the burden of undergrounding transmission lines where it is not warranted.

It is worth noting that stakeholders often cover the cost of undergrounding transmission lines so that costs are not passed on to ratepayers. For example, industrial customers, like data centers, have paid the cost to underground lines or have split costs with the municipality requesting the lines be undergrounded.

If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines. A.R.S. § 40-360(10) defines "transmission lines" as "a series of new structures erected *above ground* . . ." (emphasis added).

4. Public outreach

Additional public outreach prior to filing a CEC application can be beneficial. Additional forms of public outreach could include posts or ads on social media and mailing fliers to a wider radius of homes and businesses in the project area.

Specifying the additional forms of public notice would require a rule change because an existing rule defines what is required for public notice. *See* A.A.C. R14-3-208(C). A policy statement would not be sufficient in this instance because the proposal would impose new requirements on regulated parties.

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[4] A rule is a "statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). Prescribing fees or the amendment or repeal of a prior rule requires rulemaking. *Id.* Rules must only be promulgated pursuant to existing constitutional or statutory authority. In other words, a rule cannot exceed the scope of authority granted in the constitution or statute.

5. Electronic filing

Similar to the filing of other documents, the electronic filing of line siting documents would be beneficial. Eliminating the paper filing requirement would require a rule change because an existing rule establishes the paper filing requirement. *See* A.A.C. R14-3-203.

6. Reconductoring a line or replacing old structures

Careful consideration should be given to whether or not replacing structures should require a CEC hearing, since there is a possibility that older structures may be replaced with different ones that were not originally approved or discussed during the hearing. One option may be to consider establishing that reconductoring a line or replacing old structures with new ones **that do not differ in size or appearance from the previously approved ones** does not require a hearing or CEC process.

The Commission could issue a substantive policy statement informing the public that it does not believe reconductoring a line requires a CEC. If the Commission includes language that a CEC is not needed to replace old structures with new structures **that do not differ in size or appearance from those previously approved**, as recommended by Staff, the Commission could likely adopt the change through a policy statement. A.A.C. R14-3-207(B) requires Committee approval of amendments that substantially deviate from the original project. Including the language suggested by Staff would be consistent with the rule, and therefore would not require a rule change. If the language is not included, however, a rule change may be necessary.

It is unclear whether this proposal would have a significant impact on reducing the number of hearings since the passage of HB 2496 changed the definition of "transmission line" to "five or more new structures that span more than one mile in length . . ." It is possible that the new definition of "transmission line" will exclude a large portion of repair projects identified in this proposal.

It may be beneficial to receive input from the Line Siting Committee as to whether adopting a policy statement would reduce the number of CEC applications that require a hearing after the new definition of "transmission line" takes effect.

7. Establish a priority system for CEC hearings

Making a determination on the urgency of projects without clear standards for prioritizing projects may be difficult and subjective. Staff therefore recommends that if the Commission decides to move forward with this proposal, the Commission should take steps to establish clear criteria for the prioritization of projects.

In addition, Staff analyzes System Impact Studies ("SIS") after a CEC application is filed to determine whether the proposed project improves the reliability and/or safety of the operation of the grid and the delivery of power in Arizona. When an applicant wishes to interconnect with one

of Arizona's load-serving entities, it submits a request for interconnection and the project is placed in an interconnection queue. It is Staff's understanding that the SIS must be completed in the order of the interconnection requests. Thus, having the Committee select projects it deems more urgent could lead to some applications being filed without the necessary studies being completed, which would make it difficult for Staff to evaluate the technical impacts of proposed projects.

Additionally, the line siting statutes **require** applicants to provide an SIS as part of a power flow and stability analysis. A.R.S. § 40-360.02(C)(7). Failure to provide this analysis "constitute[s] a ground for refusing to consider an application of such a person." A.R.S. § 40-360.02(E). Because processing an application without a power flow and stability analysis would violate the line siting statutes, regulated entities may be hesitant to proceed without one.

Replacing the first-come, first-served approach would require *both* a statutory change and a rule change. A.R.S. § 40-360.04 requires the Chairman of the Committee to provide public notice of the time and place for a hearing within 10 days of receiving an application. The statute requires a hearing be held not less than 30 nor more than 60 days after notice is given. *Id.* The line siting rules require the same timeline. A.A.C. R14-3-208(A)-(B). The statute and rules effectively establish the first-come, first-served approach utilized by the Line Siting Committee, and therefore both the statute and rules would need to be amended.

As discussed above, adopting a prioritization system would likely impact the requirement to submit a power flow and stability analysis under A.R.S. § 40-360.02(C)(7) and could require a change to that statute as well. However, Staff does not recommend removing that requirement, as it enables Staff to determine impacts from proposed projects to the grid.

Finally, if a prioritization system were to be adopted through statutory and rule change, the Legal Division agrees with Staff's recommendation that the Commission establish clear criteria for prioritizing projects. The criteria would need to be adopted by statute or rule.

DRC:LH:KMU:jn

Originators: Luke J. Hutchison and Kathryn M. Ust

Arizona Pub. Serv. Co. v. Paradise Valley

Supreme Court of Arizona

April 22, 1980

No. 14605-PR

Reporter
125 Ariz. 447 *; 610 P.2d 449 **; 1980 Ariz. LEXIS 206 ***

ARIZONA PUBLIC SERVICE COMPANY, a public service corporation, Plaintiff-Appellee, v. TOWN OF PARADISE VALLEY, a municipal corporation, Defendant-Appellant, Bud Tims, Ernest Garfield and Jim Weeks as members of and constituting the Arizona Corporation Commission, Defendants-Appellees

Prior History: **[***1]** Appeal from the Superior Court of Maricopa County

Cause No. C-355464

The Honorable Kenneth C. Chatwin, Judge

Opinion of the Court of Appeals, Division One, Ariz. , P.2d (App. 1979) Vacated

Disposition: Reversed and remanded.

Counsel: Snell & Wilmer by H. William Fox, Phoenix, for plaintiff-appellee.

Roger A. McKee and Douglas A. Jorden, Paradise Valley, for defendant-appellant.

John A. LaSota, Jr., former Atty. Gen., Robert K. Corbin, Atty. Gen. by Charles S. Pierson, Asst. Atty. Gen., Phoenix, for defendants-appellees.

J. LaMar Shelley, Mesa, brief amicus curiae of League of Arizona Cities and Towns.

Judges: In Banc. Cameron, Justice. Struckmeyer, C. J., Holohan, V. C. J., and Hays and Gordon, JJ., concur.

Opinion by: CAMERON

Opinion

[*448] **[**450]** We granted the petition for review of the appellant, Town of Paradise Valley, of a decision and opinion of the Court of Appeals affirming a summary judgment in favor of Arizona Public Service and the members of the Arizona Corporation Commission. A.R.S. § 12-120.24; Rule 23, Rules of Civil Appellate Procedure, 17A A.R.S.

There is only one question on appeal and that is whether the legislature may constitutionally **[***2]** delegate to cities and towns the authority to direct the undergrounding of public utility poles.

The facts necessary for a determination of this matter on appeal are as follows. In 1964, the Town of Paradise Valley passed Ordinance No. 30 requiring new and higher capacity utility lines to be placed underground. The ordinance stated:

> "* * * no person shall erect within the town boundaries and above the surface of the ground any new utility poles and wires except after securing a special permit therefor from the Town Council * * *."

Criminal penalties were provided for failure to comply with the ordinance.

Arizona Public Service replaced some of its existing utility poles without applying to the Town for a special use permit. As a result, Arizona Public Service was charged with a misdemeanor criminal complaint before the town magistrate. Arizona Public Service then instituted a special action in the Superior Court, joining the Arizona Corporation Commission and the Town. The Superior Court, in granting appellee's motion for summary judgment, declared the ordinance invalid. The Town appealed to the Court of Appeals which affirmed the decision of the trial court. **[***3]** We granted the Town's petition for review.

[*449] **[**451]** Because this is a review from the granting of a motion for summary judgment, we must look at the facts in a light most favorable to the party against whom the summary judgment has been taken, in this case, the Town. Rule 56, Arizona Rules of Civil Procedure, 16 A.R.S.; *Hall v. Motorists Ins. Corp.*, 109 Ariz. 334, 509 P.2d 604 (1973). For that reason, we accept the Town's allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less

than the cost of above ground utility poles.

Our Constitution reads:

> "Art. 15
> "§ 3 Power of commission as to classifications, rates and charges, rules, contracts, and accounts; local regulation
>
> "Section 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations, within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction **[***4]** of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; *Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations*; Provided further that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission." (Emphasis added)

Early in our history, we held that the Corporation Commission's power was paramount, *State v. Tucson Gas, Electric Light and Power Company*, 15 Ariz. 294, 138 P. 781 (1914), and that the legislature could not delegate powers possessed by the Corporation Commission to a local government unless the Corporation Commission was, at the same time, divested **[***5]** of such powers. *Phoenix Railway Co. v. Lount*, 21 Ariz. 289, 187 P. 933 (1920). In later cases, however, we held that the Corporation Commission's paramount power is limited to rates, charges or classifications and that, as to all other matters, the legislature has the power to take what action it deems appropriate. *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 409 P.2d 720 (1966); *Southern Pacific Co. v. Arizona Corporation Commission*, 98 Ariz. 339, 404 P.2d 692 (1965). We stated:

> "[T]he paramount power to make all rules and regulations governing public service corporations not specifically and expressly given to the commission by some provision of the Constitution, rests in the legislature, and it may, therefore, either exercise such powers directly or delegate them * * *." *Corporation Commission v. Pacific Greyhound Lines*, 54 Ariz. 159, 176-77, 94 P.2d 443, 450 (1939).

The question before the court, then, is not whether the legislature has the power to authorize the Town to pass an ordinance requiring undergrounding, but whether it has, in fact, done so. In the instant case, we believe that the legislature has given cities and **[***6]** towns the power to require the undergrounding of utility poles as part of the town's zoning powers. The statute reads as follows:

> "A. Pursuant to the provisions of this article, the legislative body of any municipality by ordinance may:
> * * *
> "3. Regulate location, height, bulk, number of stories and size of buildings and structures * * *." A.R.S. § 9-462.01(A)(3).

[*450] **[**452]** This statute is a legislative grant to the cities of the authority to regulate the use, location, height and size of utility poles as part of the towns' general planning and zoning power. The height and location of utility poles is a common subject of planning and zoning statutes and ordinances, *Kahl v. Consolidated Gas, Electric Light & Power Co.*, 60 A.2d 754, 191 Md. 249 (1948). We find nothing in the Arizona statutes which exempts utility poles from the grant of authority to the towns to enact zoning laws. We believe this statute gives the Town the power to require the undergrounding of utility poles in the Town pursuant to statute.

A second statute is cited by the Town and reads as follows:

> "A. In addition to the powers already vested in cities by their respective **[***7]** charters and by general law, cities and their governing bodies may:
> * * *
> "5. Regulate the erection of poles and wires, the laying of street railway tracks, and the operating of street railways in and upon its streets, alleys, public grounds and plazas." A.R.S. § 9-276(A)(5).

The Court of Appeals and the appellees contend that the doctrine of ejusdem generis obviously applies to this

statute, and that therefore the Town has the power to regulate "poles and wires" only in connection with the laying and operation of street railways. We do not agree.

Ejusdem generis is applicable to statutes in which there are listed specific categories followed by a general category:

> "Where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. A statute enumerating things inferior cannot, by general words, be construed so as to extend to and embrace those which are **[***8]** superior. In accordance with the rule of ejusdem generis, such terms, as 'other,' 'other thing,' 'others,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described. * * *" 25 R.C.L. §§ 996, et seq., cited in 39 A.L.R. 1404.

In an early case of this court wherein the legislature enumerated nine particular businesses engaged primarily in the tourist industry, such as hotels, dude ranches, etc., followed by the term "or any other business or occupation charging * * * rents," we said:

> "The rule of ejusdem generis invoked by appellant removes any doubt that may exist as to its intention in this respect, if applicable, and it occurs to us that it is. According to it the Legislature, in following the enumeration of the nine particular businesses by the general term 'or any other business or occupation charging * * * rents,' intended to limit or restrict the meaning of this general language to businesses or occupations of the same kind, class or character as those specifically mentioned, that is, to those furnishing living accommodations to tourists or transients." **[***9]** *White v. Moore*, 46 Ariz. 48, 57, 46 P.2d 1077, 1081 (1935). See also *State Board of Barber Examiners v. Walker*, 67 Ariz. 156, 192 P.2d 723 (1948).

A.R.S. § 9-276(A)(5) is not a case of a general category following the enumeration of specific categories. Section 5 gives the Town the power to regulate three different items -- the erection of poles and wires, the laying of street railway tracks, and the operation of street railways on the streets, alleys, and public grounds and plazas of the towns. Each grant of authority stands equal and alone.

The doctrine of ejusdem generis, like other rules of statutory construction, is an aid in ascertaining the legislative intent. *United States v. Gilliland*, 312 U.S. 86, 61 S.Ct. 518, 85 L.Ed. 598 (1941); *Orr Ditch* ***[*451]*** **[**453]** *and Water Co. v. Justice Ct. of Reno*, 64 Nev. 138, 178 P.2d 558 (1947). Where the intent of the legislature is apparent, it may not be used to obscure and defeat the intent and purpose of the legislation. *United States v. Alpers*, 338 U.S. 680, 70 S.Ct. 352, 94 L.Ed. 457 (1950); *People v. McGuane*, 13 Ill.2d 520, 150 N.E.2d 168, 71 A.L.R.2d 580, cert. denied 358 U.S. 828, 79 **[***10]** S.Ct. 46, 3 L.Ed.2d 67 (1958). We do not believe that the doctrine applies here.

Appellees further rely on A.R.S. § 40-341, et seq., for the position that the legislature intended that cities and towns should not have the authority to require undergrounding at the expense of the utility. § 40-341, et seq., provide for the creation of underground conversion districts for the purpose of converting overhead electric lines to underground facilities to be paid for by the property holder in the district and not the utility. § 40-344(J) recognizes the role of the cities and towns by stating that:

> "J. The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government."

We do not believe this statute is evidence of a legislative intent that the cities and towns do not have power over utility poles in the town. The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense.

[*11]** Finally, reference is made to A.R.S. § 40-360, et seq., concerning the creation of a siting committee for transmission lines of 115 KV or greater. The lines in the Town of Paradise Valley are mostly 12 KV, with some 69 KV. The statute does not apply to lines in the Town. Even so, the statute states as to the high energy transmission lines:

> "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all

> applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available." A.R.S. § 40-360.06(D).

These exceptions evidence a legislative recognition that the cities and towns have the power to act in this area.

We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries. **[***12]** See *Kahl v. Consolidated Gas, Electric Light & Power Co.*, supra; *Benzinger v. Union Light, Heat & Power Co.*, 293 Ky. 747, 170 S.W.2d 38 (1943); *Central Me. Power Co. v. Waterville Urban Ren'l Auth.*, 281 A.2d 233 (Me.1971); *Sleepy Hollow Lake, Inc. v. Public Service Commission*, 352 N.Y.S.2d 274, 43 A.D.2d 439 (1974); 7 McQuillin, Municipal Corporations, § 24.588 (3d ed. 1968).

Reversed and remanded for proceedings not inconsistent with this opinion.

40-347. Establishment of conversion costs; apportionment of costs; method of payment

A. The order authorizing the establishment of the underground conversion service area shall authorize each public service corporation or public agency whose overhead electric or communication facilities are to be converted to charge the underground conversion costs to each lot or parcel of real property within the underground conversion service area. The underground conversion costs shall be in an amount sufficient to repay the public service corporation or public agency for the following:

1. The remaining undepreciated original costs of the existing overhead electric and communication facilities to be removed as determined in accordance with the uniform system of accounts applicable to the public service corporation or public agency.

2. The actual costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.

3. The contribution in aid of construction which the public service corporation or public agency would require under its rules and regulations applicable to underground conversion service areas.

4. If not paid in full as provided in section 40-348, the actual cost of converting to underground the facilities from the public place to the point of delivery on the lot or parcel owned by each owner receiving service, in the case of an electric public service corporation or public agency, or to the connection point within the house or structures, in the case of a communication corporation, less any credit which may be given such owner under the line extension policy of the public service corporation or public agency then in existence.

5. If property belonging to the United States, this state, county, city, school district or any other political subdivision or institution of the state or county is included in the underground conversion service area, and they do not voluntarily assume such costs, the underground conversion cost applicable to such property shall be charged pro rata against the remaining property included within the underground conversion service area.

B. The cost incurred in placing underground the facilities in public places shall be apportioned among the owners of property within the area on the basis of relative size of each parcel by the corporation commission, the board of supervisors or the city or town council. The underground conversion cost, as determined by the method prescribed in subsection A shall not exceed the estimated costs indicated in the joint report prepared by the public service corporation or public agency pursuant to subsection D of section 40-342 and, may be paid in cash by the property owners within sixty days from the date the overhead facilities are removed from public places, or may be paid by a uniform plan applicable to all property owners not paying within the sixty-day period in equal periodic installments over a reasonable period of time, not exceeding fifteen years, as established by the corporation commission, the board of supervisors or the city or town council, together with interest at a rate to be determined by the corporation commission, the board of supervisors or the city or town council but not to exceed eight per cent per annum.

C. If funds become available from other public or private sources to pay all or any part of the underground conversion costs, any such funds shall be applied on a pro rata basis to reduce the underground conversion cost charged against each parcel or lot.

D. Notwithstanding the provisions of subsection B of this section, the public service corporation or public agency serving such area may by agreement with all the owners of the property in an underground conversion service area provide for reimbursement to it of the cost of such conversion on a different basis as to payment or security than that set out by the terms of this article.

48-620. Improvement districts for underground utility and cable television facilities in public rights-of-way and easements; procedures; costs; definitions

A. Subject to the limitations contained in this section, the powers and duties of the governing body of a municipality for establishing underground utility facilities are as provided in this article for other types of improvement districts.

B. Notwithstanding section 48-507, after the governing body passes a resolution or notice declaring its intention to order an improvement district for underground utility facilities, the governing body shall hold a hearing at least thirty days after the completion of the posting and publication of the notice of intention pursuant to section 48-506. At the hearing, the governing body shall consider the issue of ordering an election on the formation of the improvement district and shall receive public comment on the proposed district. Section 48-507, regarding written protests of the proposed improvement, does not apply to a district formed pursuant to this section. The governing body may only order the election on the issue of formation of the district if the owners of real property in the district have signed and submitted petitions to the clerk of the governing body in support of the formation of the district. The petitions shall comply with the following:

1. Clearly state that they are petitions in support of the formation of an underground utility improvement district and shall specifically describe in words or by use of a map the location of the proposed district's boundaries. The petitions shall require the signer's signature, name and address or description of the property that is owned in the district in a manner sufficient to determine ownership through the use of public records.

2. Be signed by owners of a majority of the real property within the boundaries of the proposed district as measured by square footage or acreage owned. Signatures are not required to be notarized and for property with more than one owner, the signature of one owner is binding on the remaining owners of the property. On submittal to the clerk of the governing body, the petitions are a public record. Ownership of property is as of the date of the hearing and is determined by records of the county assessor or other public records regarding property ownership. For purposes of this paragraph, "owner" means a person, association, corporation or other entity without regard to residency.

C. If the governing body finds that sufficient signatures are submitted pursuant to subsection B of this section, the governing body may proceed with a simplified ballot card election pursuant to subsection G of this section. If there are not sufficient signatures, the governing body shall not proceed with the formation of the district. If no registered voters reside within the area of the proposed district, an election is not required and the governing body may declare the formation of the district.

D. The requirement pursuant to section 48-577 that plans and specifications be filed prior to adoption of the resolution of intention may be satisfied by a general plan showing at least the general location and type of facilities to be constructed. Actual plans and specifications shall be filed following the adoption of the resolution ordering the election regarding the improvement but before the election and the recording of the assessment and warrant. A person interested and objecting to an improvement or to the extent of the assessment district for a district established pursuant to this section may file a written protest with the city or town clerk within thirty days after completion or posting of the notice, or within thirty days after the date of the last publication of the notice if that date is after the completion of the posting.

E. The requirement pursuant to section 48-584 for notice of the award of contract may be satisfied by the inclusion in the resolution of intention of the name of the coordinating utility. The fifteen-day period for filing notice of objections under section 48-584, subsection E shall begin on completion of publication and posting of the notice of proposed improvement stating the name of the coordinating utility.

F. The governing body shall determine the boundaries of the district and designate the transmission facilities and, if applicable, any independent parallel facilities, to be placed underground and shall obtain from the coordinating utility an accurate statement of the costs of the project, including an estimate of the average cost in assessments

on an average single family residence in the district. The amount shall be included in the engineer's estimate required by section 48-577. The costs shall include:

1. The amount by which the cost of placing facilities underground would exceed the cost of placing comparable facilities overhead.

2. The reconstruction cost and net depreciation costs of any existing facilities to be removed.

3. The actual costs of removing such existing facilities, less the salvage value of the facilities removed.

4. The charge to finance the costs prescribed in this subsection over a stated period of not to exceed fifteen years.

5. The tax reimbursement amount.

G. On receipt of an accurate estimate of the costs of the project, the governing body shall call a simplified ballot card election in the area affected by the proposed district. The simplified ballot card shall contain the words for a district formation election "district, yes" and "district, no" and for an assessment election "assessment, yes" and "assessment, no". A single simplified ballot card may be used for both the question of the formation of the district and the question of the assessment. The election may be conducted in a simplified format and administered by the governing body. The governing body shall mail to all registered voters and property owners within the proposed district simplified ballot cards with return postage prepaid. The simplified ballot card shall clearly state that to be valid a voted ballot card shall be returned to the governing body within thirty days after the governing body mails the ballot card and a ballot card that is not timely returned shall not be counted. A person who is qualified to vote in a municipal election for that municipality or a property owner who owns land within the proposed improvement district is qualified to vote in an election for a municipal improvement district formed pursuant to this section, except that only residents of or property owners in the area that is within the proposed district may vote. If a majority of the persons voting with the simplified ballot card approves the formation of the district and if a majority of the persons voting with the simplified ballot card approves the assessment, the governing body may form the district and make the assessment. If more than one governing body is affected by a proposed district, each governing body may form its own district for the portion of the work within its jurisdiction. Assessments for districts that are formed for a portion of the same project shall be distributed between districts in proportion to the benefits to be received. When the governing body acquires jurisdiction to order the work, it shall not call for construction bids but may enter into a contract or contracts with the utility, utilities or licensed cable television system whose facilities are to be placed underground. Prior to entering into a contract or contracts the coordinating utility shall submit a final report to the municipality. The amount stated in the final report may be based on detailed engineering studies. If the amount stated in the final report exceeds the amount stated in the preliminary report the governing body may either:

1. Terminate the project.

2. Call a new election on the improvement.

H. The contract shall provide for payment to the utility or licensed cable television system over a term of not to exceed fifteen years of the amount set forth in the final report, shall specify those facilities to be owned by the municipality and those to be owned by the utility, utilities or licensed cable television system and shall contain such provisions for the prepayment of any assessment at the option of any property owner, and such other terms, covenants and conditions as the governing body and the utility, utilities or licensed cable television system determine. The licensed cable television system shall not be entitled to reimbursement except where the cable television system's parallel facilities are installed to replace existing cable television facilities other than independent parallel facilities not included by the governing body in the work. The amount payable on the contract or contracts is payable solely from amounts collected on the assessment levied in the district. A payment or performance bond is not required of a utility or licensed cable television system entering into a contract with the governing body.

I. The municipality may retain an independent engineering consultant to review all reports, estimates and costs provided by the coordinating utility.

J. The coordinating utility shall advance or reimburse a governing body for the costs of forming the district and the cost of printing, advertising and posting incurred or to be incurred by a governing body and shall bear its own expenses for engineering and design, and preparing the reports, plans and specifications. On completion of the work, the coordinating utility shall reimburse a governing body for its reasonable expenses incurred with respect to the district. Unless otherwise provided for in a manner acceptable to the coordinating utility, the amounts advanced or reimbursed shall be included in the contract and in the amount assessed.

K. This section does not amend or modify any existing line extension policies of any utility involved. The costs to be reimbursed under the contract shall be reduced to the extent of amounts paid or to be paid by landowners or from other sources directly to the utility or cable television system for the installation of the facilities.

L. The assessment and warrant may be recorded at any time following approval of the project at an election. The hearing on the assessment may be held at any time not less than twenty days from the date of recording of the assessment and warrant. An additional hearing following notice from the superintendent of streets to the governing body of completion of the work shall be requested only if any member of the governing body or any owner of or any person claiming an interest in any lot that received an assessment, within one year of the date of the notice of completion, files a written notice with the clerk stating that the work has not been performed substantially in accordance with the resolution of intention, the plans and specifications and estimate. The notice shall state in particular the failure to perform and may also state, if applicable, any requested reduction in the assessment of any one or more parcels due solely to the failure of such performance. The notice shall state the name and address of the person filing the notice and shall describe such person's interest in land subject to assessment. The governing body may enforce the contract and may recess the hearing to permit the utility or licensed cable television system to complete the work. If the work cannot be completed, the assessment may be adjusted to take the failure to complete into consideration. The amount due under the agreement with the utility or licensed cable television system shall be adjusted accordingly. Repayment under the contract shall be conditioned on completion of the work and approval of the assessment as provided by law. Unless an objection has been filed, repayment shall begin within nine months of the notice of completion.

M. An improvement district formed pursuant to this section shall not issue bonds, and the assessment for district purposes against the property within the district shall not exceed the amount specified in the engineer's estimate. Notwithstanding any other statute, the assessment for an underground electrical power line shall not be assessed against the owners of the frontage of the right-of-way of the underground power line but shall be assessed against all property owners benefiting from the burial of the power line.

N. The governing body shall provide for the levy and collection of assessments on the real property in the district in the manner provided for in this article. However, the assessment may be paid in installments necessary to pay amounts due under the contract and to reimburse the municipality for expenses incurred as provided in the assessment.

O. A district formed under this section shall not engage in any activity other than contracting for or establishing underground transmission facilities together, where applicable, with parallel facilities.

P. The governing body by resolution may summarily determine that it will participate in the costs of the improvement. If the municipality is willing to assume the total outstanding assessment for the underground utility facilities, the governing body may summarily dissolve the district by resolution after payment of all liabilities including all amounts due under the contract.

Q. The formation of an improvement district for underground utility facilities under this section does not prevent the establishment of other improvement districts which may include all or part of the same property for any purposes authorized by law.

R. If a petition for the formation of an improvement district for underground utilities is presented to the governing body, and the petition purports to be signed by all of the real property owners in the proposed district exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, may adopt a resolution of intention to order the proposed improvement pursuant to section 48-576 and has immediate jurisdiction to adopt the resolution ordering the improvement pursuant to section 48-581, without the necessity of publication and posting of the resolution of intention provided for in section 48-578.

S. If the governing body determines that a parcel of property is a single family residence and that payment of the assessment would cause a financial hardship on the owners which would be likely to cause a delinquency in payment of the assessment, the assessment for an improvement made under this section shall provide for an extension in the time to pay principal and interest on the assessment against that parcel for a period of time not to exceed ten years. If the governing body determines that the grounds for extension no longer exist, then the extension will be terminated and all payments that would have been due but for the extension shall become due. The assessment shall provide for adjustments in the assessments against the remaining parcels to provide for timely payment under the agreement.

T. Notice of the passage of a resolution of intention for an improvement under this section shall be given to the corporation commission and, where the improvement involves a utility regulated thereby, the rural electrification administration.

U. In this section, unless the context otherwise requires:

1. "Coordinating utility" means the utility whose proposed or existing transmission facilities are to be placed underground. The coordinating utility is responsible for assembling into one report cost estimates and other data provided by each utility or licensed cable television system whose facilities are to be placed underground.

2. "Cost" means all costs of design and construction of facilities.

3. "Facilities" means any works or improvements used or useful in providing electric, communications, licensed cable television service or video service, including poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, studs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances but excluding any works for transmission by microwave or radio. Facilities shall include only transmission facilities and parallel facilities.

4. "Governing body" means the council of a city or town or the board of supervisors of a county.

5. "Independent parallel facilities" means existing parallel facilities that do not rely for their support on poles or other structures to be removed as part of the work. If the utility or licensed cable television system elects to remove the independent parallel facilities but the removal and underground replacement thereof was not included by the governing body in the work, the reconstruction and removal costs of such independent parallel facilities shall not be included in a contract or be assessed.

6. "Parallel facilities" means facilities that run or are permitted to run in the easement in which the transmission facilities are to be placed underground and that may be included underground with the transmission facilities, and facilities appurtenant thereto. Any parallel facilities shall have a right to be included underground and have access to a trench on such reasonable terms and conditions as the coordinating utility and the owners of the parallel facility may determine provided they do not interfere with the installation or operation of the transmission facilities.

7. "Private parallel facilities" means parallel facilities other than those owned or operated by a public utility or licensed cable television system. Private parallel facilities have the rights of parallel facilities except that the costs thereof shall not be included in a contract or be assessed.

8. "Tax reimbursement" means an annual charge for reimbursement for property taxes, or voluntary contributions in lieu of property taxes as provided in chapter 1, article 8 of this title, by applying the tax rates in effect on the date of adoption of the resolution of intention to the amount by which the estimated average taxable value of underground facilities, excluding the value of trenches, backfill and compaction, on completion exceeds the estimated average taxable value of comparable overhead facilities. In this paragraph, "estimated average taxable value" means the average of the estimated taxable value for each year of reimbursement. The value of the trenches, backfill and compaction of the underground facilities shall be attributed to and shall inure to the benefit of the owners of property within the district and shall be owned by the city. Reimbursement shall not be for a period longer than fifteen years.

9. "Transmission facilities" means facilities that are, or are appurtenant to, electric transmission lines of more than twenty-five kilovolts but not more than two hundred thirty kilovolts in size.

Douglas R Clark
Executive Director

Thomas Van Flein
General Counsel
Office of General Counsel

ARIZONA CORPORATION COMMISSION

Office of General Counsel

March 3, 2025

Chairperson Jessica Klein
Governor's Regulatory Review Counsel
100 N 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Chairperson Klein:

This letter is to put forth the Arizona Corporation Commission's ("Commission") legal office's position on an appeal to the Governor's Regulatory Review Council ("GRRC") from Underground Arizona dated November 8, 2024. Thank you for taking the time to listen to our concerns. When we were notified of the petition, we were also informed "[a]t this time there is nothing the Arizona Corporation Commission need to do with regards to this petition." Therefore, we did not have a representative attend the February 25, 2025, meeting.

A. The Governor's Regulatory Review Council Does Not Have Authority to Review the Arizona Corporation Commissions Rules or Policy Statements

Arizona Revised Statutes ("A.R.S.") title 41 article 5 establishes and identifies powers given to GRRC. A.R.S. § 41-1057(A) states that this article does not apply to the Commission. Because the article that establishes GRRC specifically exempts the ACC from the powers given to GRRC, our rules and policies are not subject to review in this forum.

A.R.S. § 41-1057(A)(2) states that the Commission shall adopt substantially similar rule review procedures, but we are outside of the procedures adopted and administered by GRRC. The Commission's rules are published in the Arizona Administrative Code Title 14 and have complied with the rulemaking process and have been published accordingly. The policy statement issued in Commission decision 79140 is not a rule and is not required to go through the formal rulemaking process. The guidance issued in the form of a policy statement, as discussed below, is simply a restatement of existing laws and rules.

B. Costs Associated with Undergrounding Transmission Lines Are Part of The Ratemaking Process

At issue is Commission decision number 79140 dated October 4, 2023, and specifically, the guidance provided in policy statement 3 contained in the decision. Policy statement 3 basically restates existing state law and properly promulgated rules. The policy states that installing electric transmission lines underground is more expensive to install and more costly and challenging to maintain and repair. Because of the additional expense, they should only be installed if necessary for reliability or safety purposes. If the stakeholder wants them underground for other reasons, they should form an improvement district as provided in A.R.S. § 48-620 et. seq. Forming an improvement district will ensure that the additional cost of undergrounding the transmission lines will be paid for by the stakeholders making the request.

The cost of undergrounding transmission lines is significantly more expensive than above ground. Costs associated with installation of transmission lines feed directly into rates and ratemaking and is a constitutionally directed function of the Commission. The Arizona Constitution, Article 15, Section 3 provides that "[t]he corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein." The section goes on to grant the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transactions within the state."

All aspects of ratemaking, including determining appropriate costs, and issuing rules, are core constitutional duties of the Commission. Because these matters are constitutionally directed, the executive and legislature do not have the authority to reduce or alter the scope of responsibilities tasked to the Commission.

The Commission determines the rates that a public service corporation (a "utility") may charge. The Commission sets rates by finding the "fair value" of a utility's in-state property. Because the cost of undergrounding transmission lines directly impacts the fair value of those lines, the costs associated with installing and maintaining transmission lines is directly included in ratemaking. The Commissions guidance that requires the stakeholder to directly pay for the additional expense is following the law, as set forth below, and directly within the Commission's ratemaking authority.

C. The policy is Well Grounded in Existing State Law

Arizona law has three distinct statutes that address apportioning additional costs of undergrounding directly to the person requesting the change.

First, under A.R.S. § 40-341 et. seq. petitioners can form an underground conversion service area. When an underground service area is proposed, the utility for that area shall make a study to determine the "underground conversion cost." "Underground conversion cost means the costs to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area, as provided in this article." The statute directly requires the cost to be paid by each owner in the area, and not be apportioned to all utility ratepayers.

Second, A.R.S. § 48-620 allows a municipal governing body to establish an underground utility facility. And again, costs are determined prior to approval, and then if approved, the expense shall be collected through a tax assessment not to exceed fifteen years.

Third, A.A.C. R 14-2-206.B(2)(c) states a "customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection to the nonrefundable contribution."

These are the direct basis for the guidance issued in Decision 79140 through policy statement 3. The policy is merely a restatement of the law and is intended to provide guidance of the stakeholder's responsibility to pay additional costs associated with undergrounding transmission lines.

The reason for the policy is to assure that the cost of any unnecessary undergrounding is bore by the stakeholders that want it. Under A.R.S. §§ 40-341 et seq., public service corporations can install underground transmission lines (1) at their own expense (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of "underground conversion service area" and each landowner with the conversion area must pay the costs for undergrounding to the public service corporation.

Underground Arizona, in its petition, cites Arizona Public Service Co. v. Town of Paradise Valley, 125 Ariz. 447 (1980), for the premise that state law allows municipalities to require undergrounding at utility expense. APS v Paradise Valley did say that state law does not prevent a city from mandating undergrounding of utilities at utility expense, but that was in a motion for summary judgment in which the Supreme Court accepted "the Town's allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less that the cost of above ground utility poles." Because this was an issue of fact, the Court had to look at it in a light most favorable to the Town. Forty-five years later, and same policy statement at issue here, included a statement that underground lines are much more expensive to install and can be more costly and challenging to maintain and repair.

D. Conclusion

For the reasons stated above, the Commission requests that GRRC take no action on Underground Arizona's appeal of the Commission's determination. If you have any questions, feel free to reach out to our office.

Sincerely,

Robert Ridenour

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cc: Rana Lashgari, member
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March 4, 2025

Governor's Regulatory Review Council
100 N Fifteenth Ave, Suite 302
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grrc@azdoa.gov

RE: Arizona Corporation Commission March 3, 2025 Letter

Dear Members of the Governor's Regulatory Review Council,

This letter is a response to the March 3, 2025 letter sent to you by the Arizona Corporation Commission ("Commission"). The Commission makes a lot of arguments that are irrelevant to the questions before you.

A. The Governor's Regulatory Review Council ("GRRC") Does Have Authority

Arizona Revised Statutes ("A.R.S.") § 41-1057(B) states that the Commission may opt into the GRRC process. The Commission advised Underground Arizona that it could appeal pursuant to A.R.S. § 41-1033(E), which exclusively refers to the GRRC process. Moreover, the Commission did not advise Underground Arizona of an equivalent Commission-established independent process and we remain unaware of an equivalent independent process at the Commission.

A.R.S. 41-1044 mandates that exemptions under A.R.S. 41-1057 are subject to attorney general review. It would seem to us that if GRRC denies itself jurisdiction then the attorney general's office has jurisdiction. However, we see no reason for GRRC to deny itself jurisdiction when the Commission's actions clearly align with A.R.S. § 41-1057(B) and it is best equipped to issue an opinion. To deny jurisdiction is to leave Underground Arizona and similar parties at the mercy of non-existent processes.

B. The Issue is Line Siting Jurisdiction Not Ratemaking Jurisdiction

Again, as with its original response, the Commission spends most of its letter arguing red herrings. The issue before GRRC is a line siting policy statement not a ratemaking policy statement. Decision 79140 makes this fact very clear.[1] Frankly, reading the policy statement alone makes it clear because the leading sentence is effectively, "we don't have jurisdiction over any of this."[2] Can you issue policy statements or rules on issues for which you lack jurisdiction? Can you avoid having a rule reviewed by calling it a policy statement? We believe the answers to both are obviously no. Again, the Commission's own counsel said as much in a public legal memo on June 14, 2023.[3] By focusing only on its ratemaking jurisdiction and ignoring the limits of its line siting jurisdiction and the memo of its legal counsel, it seems the Commission is trying to confuse you and sidestep the actual issue because it has no arguments responsive to the actual issue.

Line siting jurisdiction is limited to overhead transmission lines under A.R.S. § 40-360(10). The Commission cannot expand line siting jurisdiction beyond its statutory limitations with policy statements or rules. Additionally, line siting is a creature of statute not the Arizona Constitution. Thus, the constitutional questions the Commission is attempting to raise by mischaracterizing a line siting policy statement as a ratemaking policy statement are a distraction and not responsive to the actual issue.

C. Conclusion

For the aforementioned reasons, Underground Arizona requests that GRRC determine the Commission's line siting policy statement is a rule, and that whether it is a policy statement or a rule, it is invalid and contrary to the very statute that created the Line Siting Committee.

Sincerely,

/s/ Daniel Dempsey

Daniel Dempsey, Director

Underground Arizona

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[1] Decision 79140 Finding of Fact 1: *"On December 23,2023. Arizona Corporation Commission Chairwoman Marquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Line Siting Committee"* https://docket.images.azcc.gov/0000209995.pdf

[2] *"3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

[3] See page 16 of Decision 79140: https://docket.images.azcc.gov/0000209995.pdf